

3 UNITED STATES OF AMERICA, : CASE NO. 3:22-CR-077-TMR  
4 Plaintiff, :  
5 vs. : SENTENCING (Part 1)  
6 TY BRANDON ROBERTS, : AUGUST 31, 2023  
7 : 9:00 A.M.  
Defendant. :

## 11 APPEARANCES.

For the Plaintiff:

12 KELLY K. ROSSI, ESQ.  
13 United States Attorney's Office  
14 200 W. Second Street  
Suite 602  
Dayton, OH 45402

15 For the Defendant:

THOMAS W. ANDERSON, ESQ.  
Federal Public Defender's Office  
1 South Main Street  
490 Fifth Third Center  
Dayton, OH 45402

Also Present: Ty Roberts, Defendant

Courtroom Deputy: Elizabeth Penski

Proceedings reported by mechanical stenography,  
transcript produced by computer.

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## INDEX OF WITNESSES

2 DIRECT CROSS REDIRECT RECROSS

3 PLAINTIFF'S WITNESSES

4 ANDREA KINZIG 62 92 105

5

## 6 DEFENSE'S WITNESSES

7 DR. JENNIFER O'DONNELL 20 38 55

8

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11 INDEX OF EXHIBITS

12 PLAINTIFF'S

**ADMITTED**

13 1 - 8 107

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1 P-R-O-C-E-E-D-I-N-G-S

9:10 A.M.

2 THE COURT: We're before the Court this morning in  
3 the matter of the United States of America versus Ty Brandon  
4 Roberts. This is Case Number 3-22-cr-77. And we're here for  
5 the purposes of commencing a dispositional sentencing hearing  
6 for Mr. Roberts.

7 Would counsel enter their appearance for the record.

8 MS. ROSSI: Good morning, Your Honor. Kelly Rossi  
9 on behalf of the United States.

10 MR. ANDERSON: Good morning, Your Honor. Thomas  
11 Anderson on behalf of the defendant.

12 THE COURT: Previously, on June the 30th, 2022,  
13 there was a 28-count indictment filed against Mr. Roberts  
14 charging him with numerous offenses: production of child  
15 pornography, coercion and enticement, transfer of obscene  
16 materials.

17 And then subsequently to that, on February the 1st, 2023,  
18 Mr. Roberts did appear before the Court and entered pleas of  
19 guilty to Counts 1 and 15 of the indictment. Again,  
20 Mr. Roberts pled guilty to Count 1, which was a count of  
21 production of child pornography, in violation of 18, United  
22 States Code, 2251(a) and (e); as well as Count 15, which is a  
23 charge of coercion and enticement, a violation of 18, United  
24 States Code, 2422(b). Those pleas were made pursuant to a  
25 plea agreement.

1                   The Court considered the pleas and accepted the pleas and  
2                   made findings of guilty. The Court referred, then, the matter  
3                   to probation for a presentence report and recommendation. The  
4                   Court has now received that report and recommendation, has  
5                   reviewed such, and stands ready to proceed with this  
6                   dispositional hearing.

7                   However, before we get started, the Court would just  
8                   confirm with counsel that they are indeed in receipt of the  
9                   report and its recommendations and that there are no  
10                   objections now pending.

11                   Ms. Rossi.

12                   MS. ROSSI: Your Honor, that is correct, there are  
13                   no objections from the government.

14                   THE COURT: All right. Mr. Anderson.

15                   MR. ANDERSON: Thank you, Judge. We have received  
16                   the report. There are no objections.

17                   THE COURT: All right. Mr. Roberts, the way the  
18                   Court would proceed in dispositional hearings when there are  
19                   no objections to the report and recommendation of probation,  
20                   the Court will be considering your disposition by considering  
21                   seven factors of sentencing under 18, U.S.C., 3553. One of  
22                   those factors is the advisory guideline calculation under the  
23                   United States Sentencing Guidelines.

24                   So what I plan to do here is, first, the Court would  
25                   consider that factor, and I will consider the factor -- I will

1 consider the report and recommendation of probation. I will  
2 make my findings with regard to that factor. I will then  
3 share -- and I will share those findings with the record. The  
4 Court will then share with the record the parameters of  
5 sentencing within which the Court will be considering your  
6 disposition as called for by the statutes that govern those  
7 violations, as well as a result of the Court's findings with  
8 regard to the guideline calculations.

9 Then, once the Court has done that, the Court will afford  
10 an opportunity for counsel to present any evidence, testimony,  
11 or whatever they wish to present at that point in time with  
12 regard to the factors of sentencing.

13 My understanding is there are several witnesses, one I  
14 believe by the government, one called on your behalf. And  
15 then once the Court has heard those witnesses, the testimony  
16 or evidence that's presented, the Court does plan to recess  
17 this dispositional hearing, affording an opportunity for  
18 counsel to submit to the Court briefing with regard to the  
19 factors of sentencing in light of the evidence that was  
20 presented in addition to and supplementing the report and  
21 recommendation.

22 The Court will then reconvene the hearing, and at which  
23 time the Court will afford an opportunity for counsel to argue  
24 to the Court the factors of sentencing and what they believe a  
25 sentence is that meets the goals of sentencing but is not more

1       than necessary. Of course, at that point in time you also, if  
2       you so desire, will be given an opportunity to address the  
3       Court with regard to disposition.

4           Also, the Court at that point in time, as part of the  
5       government's case, would afford an opportunity, if any victim  
6       wishes to present any statement or victim impact statement at  
7       that point in time, the Court would consider that.

8           Once that is all done, then the Court will be sharing  
9       with the record its findings with regard to the guideline  
10       calculations -- I'm sorry. Not the guideline calculations --  
11       with regard to the factors of sentencing and impose  
12       disposition.

13           Do you understand how I'm going to proceed?

14           THE DEFENDANT: Yes, Your Honor.

15           THE COURT: Any questions, Mr. Anderson?

16           MR. ANDERSON: No, Your Honor. Thank you.

17           THE COURT: Ms. Rossi?

18           MS. ROSSI: No, Your Honor. Thank you.

19           THE COURT: All right. Well, as I indicated, since  
20       there were no objections to the report and recommendation, the  
21       Court, as I indicated, has reviewed the report and  
22       recommendation and specifically with regard to the guideline  
23       calculation, the recommendation of probation.

24           After that review and there being no objections to the  
25       guideline calculation, the Court is going to adopt the report

1 and recommendation in total. The Court does that in  
2 conformity with the Supreme Court cases of *Booker* and *Fanfan*  
3 and while utilizing the 2021 edition of the guidelines manual.

4 The Court does find that in this case -- well, the Court  
5 is going to share the Court's specific findings with regard to  
6 the record.

7 The Court finds that Mr. Roberts has two counts of  
8 conviction. Count 1 charged production of child pornography,  
9 in violation of 18, United States Code, 2251(a) and (e); and  
10 Count 15 charged coercion and enticement, a violation of 18,  
11 United States Code, 2422(b).

12 Pursuant to Guideline 3D1.1(a), when a defendant has been  
13 convicted of more than one count, the Court shall group the  
14 counts resulting in conviction into distinct groups of closely  
15 related counts by applying the rules specified in Guideline  
16 3D1.2, then determine the offense applicable to each group by  
17 applying the rules specified in 3D1.3, and finally, determine  
18 the combined offense level applicable to all groups taken  
19 together by applying the rules specified in 3D1.4.

20 According to Appendix A, the applicable guideline for  
21 Count 1 is located in Guideline 2G2.1, The Sexual Exploitation  
22 of a Minor. And the applicable guideline for Count 15 is  
23 located in Guideline 2G1.1 or 2G1.3.

24 The Court finds, as recommended, that the most analogous  
25 guideline for Count 15 is Guideline 2G1.3, which is The

1 Promoting of Commercial Sex Act or Prohibited Sexual Conduct  
2 with a Minor; Transportation of Minors to Engage in Commercial  
3 Sex Act or Prohibited Sexual Conduct; Travel to Engage in  
4 Commercial Sex Act or Prohibited Sexual Conduct With a Minor;  
5 Sex Trafficking of Children, Use of Interstate Facilities to  
6 Transport Information About Minors.

7 The counts of conviction do not meet the provisions of  
8 Guideline 3D1.2 as recommended, and the Court so finds, as the  
9 counts do not involve the same victim, and one count does not  
10 embody conduct that is treated as a specific offense  
11 characteristic in guidelines applicable to another of the  
12 counts.

13 Additionally, the offenses calculated under 2G2.1 are  
14 specifically excluded from the grouping rules for closely  
15 related counts under Guideline 3D1.2(d). As a result,  
16 Mr. Roberts's counts shall be scored as separate and distinct  
17 groups with a combined total offense level to be determined  
18 pursuant to 3D1.4.

19 Count 1, the Production of Child Pornography. The  
20 offense level is determined on the basis of all acts and  
21 omissions committed, aided, abetted, counseled, commanded,  
22 induced, procured, or willfully caused by the defendant that  
23 occurred during the commission of the offense of conviction,  
24 in preparation for that offense, or in the course of  
25 attempting to avoid detection or responsibility for that

1 offense.

2 Count 1 charges one Polaroid Roberts produced of Minor A.  
3 However, the government indicted Counts 1 through 9 occurring  
4 in one larger occurrence when Minor A spent the night with  
5 Roberts. As such, all nine Polaroids Roberts produced of  
6 Minor A occurred during the commission of the offense or in  
7 preparation for that offense, and the conduct in those nine  
8 images will be used in determining the total offense level as  
9 recommended.

10 The Court finds that according to Guideline 2G1.1 the  
11 base offense level, therefore, for Count 1 is an 32.

12 The Court does find that there are specific offense  
13 characteristics that apply to Count 1, and that base offense  
14 level, pursuant to Guideline 2G1 -- I'm sorry -- 2G2.1(b)(1),  
15 if the offense involved a minor who had not attained the age  
16 of 12 years, there is an increase of 4 levels; or attained the  
17 age of 12 years but not attained the age of 16 years, there is  
18 an increase of 2 levels.

19 Pursuant to the investigation in the information before  
20 the Court and consistent with the statement of facts that have  
21 been accepted, Mr. Roberts produced Polaroid photographs of  
22 Minor A from February 1, 2007, to February 23, 2008, when the  
23 victim was 11 or 12 years old.

24 The government indicated, due to the age of the offenses,  
25 there was no way to determine if the victim was 11 or 12 years

1       old from when Polaroid images were produced. As such, in due  
2       deference to the defendant, the enhancement under Guideline  
3       2G2.1(b)(1)(B) is appropriate; and therefore, there is a  
4       2-level increase in the base offense level.

5           The Court further finds that pursuant to Guideline  
6       2G2.1(b)(2)(A) if the offense involved the commission of a  
7       sexual act or sexual contact, there is an increase of 2  
8       levels. According to 18, U.S.C., 2246(2)(B), "sexual act"  
9       includes contact between the mouth and penis, the mouth and  
10      the vulva, and the mouth and the anus. The Polaroid images  
11      show Roberts performing oral sex on Minor A and Minor A  
12      performing oral sex on Roberts. Therefore, the 2-level  
13      increase is appropriate and warranted.

14           The Court further finds that pursuant to Guideline  
15       2G2.1(b)(5), if a defendant was the parent, relative, or legal  
16       guardian of the minor involved in the offense, or if the minor  
17       was otherwise in the custody, care, or supervisory control of  
18       the defendant, there is an increase of 2 levels.

19           In determining whether to apply this adjustment, the  
20       Court has looked at the actual relationship that existed  
21       between the defendant and the minor and not simply to the  
22       legal status of the defendant-minor relationship.  
23           Accordingly, to the investigation and again consistent with  
24       the statement of facts that has been accepted, Mr. Roberts  
25       produced Polaroid images of child pornography involving Minor

1       A while Minor A was staying with Roberts. As such, Minor A  
2       was in Roberts's custody, care, and control, and the 2-level  
3       adjustment -- 2 level, additional 2-level adjustment is  
4       appropriate.

5           The Court does not find other adjustments to be  
6       appropriate, and therefore, the Court finds that Mr. Roberts's  
7       adjusted offense level for Count 1 is a 38, with the base  
8       offense level and then adding the three specific offense  
9       characteristics.

10           Count 15, Coercion and Enticement. The guideline for a  
11       violation of 18, United States Code, 2422(b) is Guideline  
12       2G1.3. Under subdivision (c)(1) of that guideline, if the  
13       offense involved causing, transporting, permitting, or  
14       offering or seeking by notice or advertisement a minor to  
15       engage in sexually explicit conduct for the purpose of  
16       producing a visual depiction of such conduct, the Court is to  
17       apply 2G2.1 if the resulting offense level is greater than  
18       determined in 2G1.3.

19           The adjusted offense level under 2G1.3 was determined to  
20       be 32 based on the base offense level of 28 under 2G1.3(a)(3)  
21       and a 2-level enhancement under 2G1.3(b)(2) and (b)(3), and  
22       the Court would so find. Therefore, the offense level under  
23       2G2.1 results in the greater adjusted offense level, and the  
24       cross reference is applied. So, therefore, the Court does  
25       find, in accordance with 2G2.1, the base offense level to be a

1 32.

2 The Court also finds, again, that there are specific  
3 offense characteristics that apply. Pursuant to  
4 2G2.1(b)(1)(B), if the offense involved a minor who attained  
5 the age of 12 years but not 16 years, there is an increase of  
6 2 levels. Accordingly, the investigation, and consistent  
7 again with the statement of facts, Minor C was 12 years old at  
8 the time of the offense, and therefore, a 2-level increase is  
9 warranted.

10 Also, according to 2G2.1(b)(6), if for the purpose of  
11 producing sexually explicit material or for the purpose of  
12 transmitting such material live the offense involved the use  
13 of a computer or an interactive computer service, or  
14 participation with a minor -- to solicit participation with a  
15 minor in sexually explicit conduct, there is an increase of 2  
16 levels.

17 Again, according to the investigation and, again,  
18 consistent with the facts accepted between August the 19th,  
19 2014, and September the 6th, 2014, Mr. Roberts used his iPod  
20 Touch to communicate with Minor C, a 12-year-old living in  
21 Texas at the time, via the Kik Messenger application. During  
22 the communication, Roberts posed as a 14-year-old girl and  
23 solicited sexually explicit images from Minor C. Minor C  
24 produced and sent two images depicting child pornography to  
25 Roberts in direct response to the request.

1                   As such, the Court finds that the 2-level increase is  
2 appropriate, therefore, making Mr. Roberts's adjusted offense  
3 level for Count 15 a 36.

4                   Pursuant to the Court's previous findings, the Court  
5 would calculate a multiple-count adjustment for the combined  
6 adjusted offense level. According to Guideline 3D1.4(a), in  
7 determining the number of units, counts as one unit the group  
8 with the highest offense level and count one additional unit  
9 for each group that is equally serious or from one to four  
10 levels less serious.

11                  So Count 1 with the adjusted offense level of a 38 is  
12 entitled to 1 unit. Count 15, which has an adjusted offense  
13 level of 36, is equal to 1 unit. Therefore, the total number  
14 of units that would be applied for this calculation is 2.

15                  The greater of the adjusted offense levels, again, is a  
16 38. And pursuant to Guideline 3D1.4, if the number of units  
17 equals 2, the highest offense level shall be increased by 2  
18 levels. So, therefore, Mr. Roberts's combined adjusted  
19 offense level would therefore be a 40.

20                  Finally, pursuant to Guideline 4B1.5, the defendant meets  
21 the criteria, the Court finds, of repeat and dangerous sex  
22 offender against minors. The Court specifically finds that  
23 according to Guideline 4B1.5(b), in any case in which a  
24 defendant's instant offense of conviction is a covered sex  
25 crime and the defendant engaged in a pattern of activity

1       involving prohibited sexual conduct, the offense level shall  
2       be increased by 5 levels and the criminal history category  
3       shall be the criminal history category determined under  
4       Chapter 4, Part A.

5           According to Application Note 2 and for the purposes of  
6       this guideline, the instant offense of conviction must be a  
7       covered sex crime, an offense perpetrated against a minor  
8       under (ii), Chapter 110 of Title 18, or Chapter 117 of Title  
9       18.

10          The counts of conviction for Mr. Roberts that were  
11       perpetrated against minor were under Chapter 110 and Chapter  
12       117 of Title 18. Therefore, the Court finds that they are  
13       covered sex crimes.

14           Additionally, according to Application Note 4(B)(i), the  
15       defendant engaged in a pattern of activity involving  
16       prohibited sexual conduct if on at least two -- if on at least  
17       two separate occasions the defendant engaged in prohibited  
18       sexual conduct with a minor.

19           And according to the Application Note 4(A), the  
20       definition of "prohibited sexual conduct" means any offense  
21       described in 18, U.S.C., 2426(b)(1)(A), or the production of  
22       child pornography. Such definition under 2426(b)(1)(A)  
23       includes any violation under Chapter 110 and Chapter 117,  
24       which the Court has found these are.

25           Application Note 4(B)(ii) specifies that an occasion of

1       prohibited sexual conduct may be considered without regard to  
2       whether the occasion occurred during the course of an instant  
3       offense or resulted in a conviction for the conduct that  
4       occurred on that occasion.

5           In this case, the investigators determined that  
6       Mr. Roberts used various Internet-based platforms to  
7       communicate with minors around the world to produce child  
8       pornography. He frequently pretended to be minor -- a minor  
9       teenage girl to entice and coerce minor boys to create/send  
10      sexually explicit images and videos of themselves to  
11      Mr. Roberts.

12           Mr. Roberts, while tricking minor boys into thinking they  
13      were communicating with a minor girl, manipulated the minor  
14      boys into producing child pornography and sending it to him.  
15           Mr. Roberts used gift cards to Internet-based gaming platforms  
16      to entice and coerce the minor boys to create and send  
17      Mr. Roberts sexually explicit images and videos of themselves  
18      and/or other minor boys.

19           More than 11,000 images and videos of child pornography,  
20      including hundreds of images of videos -- and videos Roberts  
21      himself had produced and coerced and enticed minors to produce  
22      from his residence. Of the hundreds of child pornography --  
23      of the hundreds of child pornography files produced,  
24      investigators were able to identify 44 victims, most of which  
25      were between the ages of 11 and 14 when the images were

1       produced. He specifically produced images of Minor A engaged  
2       in sexually explicit conduct with him while Minor A was under  
3       his care, custody, and control. While posing as a 14-year-old  
4       girl online, he coerced Minor C to produce and send child  
5       pornography images of himself to Mr. Roberts.

6           Roberts's pattern of conduct encompasses a period of  
7       approximately 15 years and involves at least 44 victims that  
8       have been identified and several others who were not  
9       identified. As such, the Court finds that the 5-level  
10      enhancement for repeat and dangerous sex offender against  
11      minors is applicable and therefore is applied, therefore,  
12      making Mr. Roberts's adjusted offense level with the Chapter 4  
13      enhancement a 45.

14           The Court does find, however, that Mr. Roberts has  
15      demonstrated at this time an acceptance of responsibility for  
16      his offense and is entitled to a 2-level decrease under  
17      3E1.1(a), as well as timely notifying the authorities of his  
18      intention to plead and entitling him to an additional 1-level  
19      reduction under 3E1.1(b). Therefore, Mr. Roberts's total and  
20      final offense level, the Court finds, is a 42.

21           The Court -- having made those findings, the Court would  
22      just share with the record the parameters of sentencing within  
23      which the Court will be considering disposition.

24           For Count 1 the minimum term of imprisonment is 5 years  
25      and the maximum term is 30 pursuant to 18, U.S.C., 2251(e).

1       For Count 2, the minimum term of imprisonment is 10 years and  
2       the maximum term is life pursuant to 18, U.S.C., 2422(b).

3           Based upon the guidelines, with the total offense level  
4       of 42, which the Court has found, and the Court has also  
5       found -- the Court also finds that Mr. Roberts's criminal  
6       history category is a I, the guideline imprisonment range is  
7       360 months to life. And since that applicable guideline range  
8       is in Zone D of the sentencing table, the minimum term must be  
9       served by a sentence of imprisonment.

10           After any term of incarceration, under the statute there  
11       would be a term of supervised release, which could be at  
12       least -- which would be at least five years up to life on both  
13       counts. Those multiple terms of supervised release shall run  
14       concurrently. Under the guidelines, supervised release shall  
15       not be less than the minimum term of years specified for the  
16       offense, five years on both counts under subdivisions (a) (1)  
17       through (3), and may be up to life if the offense is a sex  
18       offense.

19           Mr. Roberts is not eligible for probation consideration.

20           With regard to fines, the maximum fine on both counts is  
21       \$250,000. There are also special assessments of \$100 on each  
22       count pursuant to 18, U.S.C., 3013. There are additional  
23       assessments imposed under Section 3013 of \$5,000 each count on  
24       any nonindigent person.

25           Count 1, the defendant is also subject to the provisions

1       of the Amy, Vicki, and Andy Child Pornography Assistance Act  
2       of 2018, in addition to any other criminal penalty,  
3       restitution, or special assessment authorized by law. And the  
4       Court shall not assess more than \$50,000 on any person  
5       convicted of this.

6               Guidelines: The guideline range for a fine, if one were  
7       to be imposed, is within the range of 25,000 to 250,000  
8       pursuant to Guideline 5E1.2(c)(3).

9               Restitution under both the statute and the guidelines is  
10      mandatory.

11              Those are the parameters of sentencing within which the  
12      Court will be considering disposition.

13              The Court will now afford an opportunity for counsel to  
14      address the Court -- well, the Court will afford counsel an  
15      opportunity to present any evidence or testimony that they  
16      wish to present with regard to the factors of sentencing  
17      and/or disposition, mitigation of disposition.

18              As I indicated, we are going to basically be hearing  
19      testimony and/or evidence here presented today. I'm reserving  
20      the right for counsel to argue their case at a later date.  
21      But this gives the Court an opportunity -- or it gives counsel  
22      an opportunity to brief whatever evidence is presented to me  
23      today with regard to disposition and then, therefore, the  
24      Court an opportunity to consider that prior to their arguments  
25      and, of course, any possible statement from Mr. Roberts and/or

1 victim -- or victims of the offense.

2 So with that, it is also my understanding that counsel  
3 has agreed to present testimony a little out of the normal  
4 order. Is that correct, Ms. Rossi?

5 MS. ROSSI: That is correct, Your Honor.

6 THE COURT: It's my understanding, Mr. Anderson, you  
7 have a witness that needs to -- is limited in her  
8 availability, and so, therefore, you wish to go first with  
9 regard to the presentation.

10 MR. ANDERSON: That is correct, Judge.

11 THE COURT: You may.

12 MR. ANDERSON: Thank you. Your Honor, thank you.  
13 At this time I would call Dr. Jennifer O'Donnell.

14 THE COURT: Okay.

15 **DR. JENNIFER O'DONNELL, DEFENSE WITNESS, SWORDN**

16 THE COURT: Before we get started, it's my  
17 understanding that there is a -- you can have a seat.

18 It's my understanding that there is a report. Ms. Rossi,  
19 you have seen the report?

20 MS. ROSSI: I have, Your Honor.

21 THE COURT: Thank you. Go ahead.

22 MR. ANDERSON: Your Honor, thank you. And I know  
23 Dr. Donnell has a copy of her report. I could have it marked  
24 to refer to it for identification --

25 THE COURT: That would be fine.

DR. JENNIFER O'DONNELL - DIRECT

20

1 MR. ANDERSON: -- as Defendant's Exhibit 1.

2 THE COURT: All right.

3 MR. ANDERSON: I do plan on filing the report under  
4 seal when I do submit my post-hearing memorandum, but I will  
5 have the witness refer to her report.

6 THE COURT: All right.

7 MR. ANDERSON: Thank you.

8 **DIRECT EXAMINATION**

9 BY MR. ANDERSON:

10 **Q.** Good morning, Dr. O'Donnell. Could you please identify  
11 yourself and spell your name for the court reporter?

12 **A.** Yes. Jennifer O'Donnell, O-apostrophe-capital-  
13 D-O-N-N-E-L-L.

14 **Q.** And, Dr. O'Donnell, where are you presently employed?

15 **A.** I am the CEO and legal examiner at the Forensic  
16 Evaluation Service Center, and I also have a private  
17 practice.

18 **Q.** Okay. And how long have you been employed with the  
19 forensic center?

20 **A.** The second time of employment there started in 2010,  
21 and then that agency morphed into the current agency in  
22 2016.

23 **Q.** So you are a psychologist?

24 **A.** Yes, I am a psychologist.

25 **Q.** And just briefly, could you give your educational

DR. JENNIFER O'DONNELL - DIRECT

21

1       credentials?

2       **A.**      I have a doctorate in psychology from Xavier  
3       University. I completed that in 2001 and became licensed to  
4       practice in Ohio in December 2002. I've been practicing  
5       ever since.

6               I recently became licensed to practice temporarily in  
7       Idaho, and I have a PSYPACT license as well.

8       **Q.**      And can you briefly just give the Court a sense of what  
9       your current employment entails?

10      **A.**     Yes. So my full-time employment is as the, like I  
11       said, CEO of a forensic center, one of the ten certified  
12       forensic centers in the state of Ohio. I created that  
13       nonprofit in 2016. And now I manage a full-time forensic  
14       director, also a psychologist for contract psychologists to  
15       provide assistance, and I think my admin team is up to five  
16       now.

17      **Q.**      Okay. When you talk about forensic psychology, could you  
18       just give a brief description of what you mean by forensic  
19       psychology?

20      **A.**     Yes. I specialize in assessment work, court-ordered  
21       evaluations across the state of Ohio. We primarily are --  
22       my agency is primarily funded to do competency evaluations,  
23       post-NGRI evaluations. We also do several -- several other  
24       post-conviction evaluations, mitigations at the state -- in  
25       the state court level.

DR. JENNIFER O'DONNELL - DIRECT

22

1           We also have an intervention-in-lieu-of-conviction  
2        clinic. We do outpatient competency restoration for a  
3        six-county region and actually around the state as well.

4           I have a private practice that primarily focuses on the  
5        new 2929, severely mentally ill statute, as well as second  
6        and third opinions for competency insanity.

7       **Q.**    Let's talk about sex offenders for a moment.

8       **A.**    Okay.

9       **Q.**    In your experience in forensic psychology in doing  
10      evaluations for criminal defendants, have you performed  
11      evaluations in whatever capacity for defendants who have been  
12      convicted of sex offenses?

13      **A.**    Yes, many times. Because of my age, I have been in the  
14      field now for 20-some years, and when I was still pre-  
15      licensed, so I worked as a psychology assistant and post-doc  
16      psychologist in the late '90s, when the statute 2950 had  
17      been revealed in Ohio, and that required the courts to go  
18      back to anyone who had been convicted of a sex offense and  
19      be re-evaluated under what we colloquially called the  
20      (i)(3)(J) criteria to determine the level of sex offender  
21      status.

22      **Q.**    If I could stop you right there. What about your  
23      experience with sex offenders who have committed offenses  
24      against minors, have you had experience with those types of  
25      defendants?

DR. JENNIFER O'DONNELL - DIRECT

23

1       **A.**     Yes. In my 20-some years of practice, the demographics  
2                   of the victims have ranged from very young all the way to  
3                   extremely old.

4       **Q.**     And you mentioned something about a classification system  
5                   in Ohio state court; is that correct?

6       **A.**     Yes. There is something called the 2950, I think is  
7                   the statute number. I did over, in the late '90s -- I tried  
8                   to check the numbers on this, but I don't have access to  
9                   that agency's records anymore because I am no longer there.  
10               I did over 70 2950 evaluations in the late '90s to 2001 when  
11               I finally became licensed. Since then, I've done about  
12               three dozen of those, is my estimate. It's hard to check  
13               records across agencies, though.

14       **Q.**     So as part of your specialty, courts, state courts would  
15               employ you to evaluate sex offenders, including sex offenders  
16               with minor victims, to assess them for purposes of  
17               registration in state court; is that fair?

18       **A.**     Exactly.

19       **Q.**     And you would apply some criteria to sex offenders,  
20               including sex offenders with minor victims, to inform the  
21               court as to how they should have to register or how they  
22               should be classified with respect to dangerousness and the  
23               seriousness of their offenses; is that correct?

24       **A.**     That's correct.

25       **Q.**     Now, obviously, Dr. O'Donnell, my office hired you; is

DR. JENNIFER O'DONNELL - DIRECT

24

1       that correct?

2       **A.**    That's correct.

3       **Q.**    And my office is paying you?

4       **A.**    Yes.

5       **Q.**    And the purpose of my office involving you was to have  
6       you do a forensic evaluation of Mr. Roberts; is that correct?

7       **A.**    Correct, for post-conviction.

8       **Q.**    Right. Now, obviously, the federal system does not have  
9       the type of classification system that the state court does,  
10      but this judge is required to evaluate the dangerousness  
11      Mr. Roberts poses now and may pose when he is released, as  
12      well as treatment options that are available to him. And you  
13      have listened to the judge basically go through Mr. Roberts's  
14      offenses of convictions; is that correct?

15      **A.**    That's correct.

16      **Q.**    And I believe in preparation for your evaluation you did  
17      review the presentence investigation report that was prepared  
18      in this case?

19      **A.**    I did.

20      **Q.**    And I believe that's a very thorough document that  
21      basically details the facts that Mr. Roberts has admitted to?

22      **A.**    That's correct.

23      **Q.**    Now, Dr. O'Donnell, could you please just briefly tell  
24      the Court what else you did in preparation for your evaluation  
25      of Mr. Roberts?

DR. JENNIFER O'DONNELL - DIRECT

25

1       **A.**     Yes. So I first reviewed the presentence investigation  
2        report and the nature of the charges so that I understood  
3        what the nature of the mitigation factors were likely to be.  
4        Then I evaluated Mr. Roberts starting on June 16th. He was  
5        being held at the Butler County Jail. I saw him for two,  
6        two and a half hours on the first visit, and then I returned  
7        June 27th for an additional 90 minutes to finish the  
8        evaluation.

9       **Q.**     So if I could stop you right there. So you met -- after  
10      you reviewed the collateral information about the charge --

11      **A.**     Yes.

12      **Q.**     -- you met individually alone with Mr. Roberts at the  
13      jail; is that right?

14      **A.**     Yes.

15      **Q.**     And I believe you said you spent approximately two and a  
16      half hours with him on the first visit?

17      **A.**     That's correct.

18      **Q.**     And then you saw him again for an additional hour and a  
19      half?

20      **A.**     Correct.

21      **Q.**     So, roughly, you've spent about four hours speaking with  
22      Mr. Roberts while he's been in jail?

23      **A.**     That's the face-to-face, yes.

24      **Q.**     Right. And then, obviously, you generated a report based  
25      on your findings; is that correct?

DR. JENNIFER O'DONNELL - DIRECT

26

1           A.       Yes.

2 Q. And you also subjected Mr. Roberts to some testing that's  
3 reflected in your report; is that correct?

4           A.     That's correct.

5 Q. Do you do that pretty much with every offender that you  
6 evaluate?

7 A. That's my routine for the mitigation evaluations, yes.

8 Q. Understood. Now, if you have a copy of your report,  
9 which I'll refer to as Defendant's Exhibit 1, I'd like to have  
10 you turn to page 8. And I want to start with the Summary  
11 that's contained in your report.

12 A. Okay.

13 Q. As we've indicated, you have read the presentence report  
14 in this case?

15 A. Yes, that's correct.

16 Q. And you feel you understand the conduct that Mr. Roberts  
17 has admitted to; is that correct?

18 A. Yes, I do.

19 Q. And you're also aware that the sentencing guidelines in  
20 this case call for a sentence of 360 months, or 30 years, to  
21 life; is that correct?

22 A. I am now, yes.

23 Q. And you understand that Mr. Roberts is subjected to a  
24 15-year mandatory minimum; is that right?

25 A. Yes.

DR. JENNIFER O'DONNELL - DIRECT

27

1       **Q.**     Now, if I could turn your attention to the second full  
2     paragraph under the heading of Summary on page 8. And if we  
3     could go down eight lines to the sentence that begins with the  
4     word "Fortunately." Do you see that?

5       **A.**     Okay. Yes.

6       **Q.**     Could you just please read that sentence starting with  
7     the word "Fortunately"?

8       **A.**     Okay. "Fortunately for Mr. Roberts and the community,  
9     this defendant does not have a propensity for violence and  
10    is expressing contrition and the desire to learn how to  
11    change his behavior."

12      **Q.**     And obviously, you made that statement in your written  
13    report?

14      **A.**     Correct.

15      **Q.**     Now, with respect to -- let me back up. Why is it  
16    important in your opinion, Doctor, to assess whether you  
17    believe a defendant has a propensity for violence? And I  
18    would assume in this context we are talking about sexual  
19    violence.

20      **A.**     So the importance there is the classification of the  
21    individual with regard to the benefits of treatment. So the  
22    different treatment models -- we started, we being the field  
23    of mental health, started doing sex offender treatment, I  
24    mean, in the 1900s for sure, but more recently starting in  
25    the 1970s when we began treatment, we would treat all sex

DR. JENNIFER O'DONNELL - DIRECT

28

1       offenders in the same manner. And what we found -- there's  
2       quite a bit of research now -- but what we found is that sex  
3       offenders who are inherently violent and have a propensity  
4       for violence not only in their sexual acts but in the rest  
5       of their lives in general are a different kind of offender  
6       and require a much different kind of intervention and have  
7       poorer outcomes for intervention.

8       **Q.**     And I would assume, Doctor, you have done evaluations for  
9       courts, maybe for a prosecutor's office and maybe for defense  
10       counsel, where you have determined that an offender did have a  
11       propensity for sexual violence; is that correct?

12       **A.**     Extreme violence, yes.

13       **Q.**     Now, with respect to this case, is it your opinion still  
14       that based on your evaluation of Mr. Roberts and the testing  
15       that you've employed and your understanding of his offense  
16       conduct, do you believe that Mr. Roberts falls into that  
17       category of a sexual offender with a propensity for violence?

18       **A.**     No violence.

19       **Q.**     Okay. And not to put words in your mouth, Doctor, but  
20       you indicated that the reason you assess that is because  
21       that's imperative for how someone is treated or how they  
22       should be treated moving forward; is that correct?

23       **A.**     Correct.

24       **Q.**     Okay. Now, Doctor, if I could turn your attention back  
25       to page 8 of your report.

DR. JENNIFER O'DONNELL - DIRECT

29

1                   You mentioned something called dialectical behavioral  
2                   therapy; is that correct?

3           **A.**    That's correct.

4           **Q.**    Could you just give the Court an idea of what dialectical  
5                   behavioral therapy is?

6           **A.**    So like I mentioned back in the '70s when we started  
7                   doing therapy with sex offenders in a systematic way --  
8                   before that we really weren't, but back in the '70s I got  
9                   wind of this systematic stuff -- by the '90s, we had evolved  
10                  our treatment modalities to following a very proscribed  
11                  doctrine of intervention under a protocol called cognitive  
12                  behavioral therapy.

13                  Also in early 2000s, dialectical behavioral therapy was  
14                  a new type of treatment under the cognitive behavioral  
15                  model. So if you think about -- I use my hands a lot. I'm  
16                  sorry. But if you think about the big umbrella of therapy,  
17                  cognitive behavioral therapy is well-known. It's change in  
18                  thinking, thinking for a change. The typical criminal  
19                  justice intervention models, they're all cognitive  
20                  behavioral therapy based.

21                  Dialectical behavioral therapy is under that CBT  
22                  umbrella, and it actually focuses on the emotional  
23                  regulation of an individual. So we have the overarching  
24                  protocol for cognitive change, thinking change, but under  
25                  DBT, we have the opportunity to work with an individual to

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30

1 develop their emotions in a more sophisticated manner, to  
2 help them mature emotionally.

3 Q. I'd like to stop you there, because you talked about  
4 emotional immaturity.

5 A. Yes.

6 Q. And obviously in your review of the presentence report,  
7 you understand that the victims in this case are boys ranging  
8 in the age of, the majority, 11 to 14 or 15. There was some  
9 contact on the Internet, I believe, with boys that may have  
10 been younger than that, but certainly primarily what we're  
11 talking about here is Mr. Roberts's interaction with teenage  
12 boys?

13 A. Correct.

14 Q. Now, as opposed to just cognitive behavioral therapy --

15 A. Um-hmm.

16 Q. -- if I understand you correctly, dialectical behavioral  
17 therapy goes to helping a defendant perhaps mature  
18 emotionally?

19 A. Exactly.

20 Q. Now, in your interactions with Mr. Roberts, I know that  
21 you have not classified him as being a violent sexual  
22 offender, but were you able to come to any conclusions or draw  
23 any conclusions about Mr. Roberts's emotional maturity?

24 A. Yes.

25 Q. Could you please inform the Court of what your assessment

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31

1       was after meeting with Mr. Roberts?

2       **A.**     Yes.    But I want to bracket it with that there are --  
3                    there are no scientific measurements of maturity.  I can't,  
4                    like, assign an age and say at this -- there are  
5                    developmental milestones.  He's met his developmental  
6                    milestones.  He can live independently, drive a car, learns  
7                    to manage money, things like that.

8                    His social maturity, though, is very impaired.  He -- I  
9                    would estimate, if I were trying to assign an age  
10                    appropriate level to his social maturity, he's about 14.  He  
11                    has not matured in the way that a typical healthy adult will  
12                    mature.  There are several reasons for that.  I went into  
13                    those in the report.  Similar to a drug abuser or someone  
14                    who has been horrifically abused during their childhood,  
15                    people get stuck at maturity levels.  In my estimation, in  
16                    my clinical experience, Mr. Roberts is stuck in those early  
17                    teen years.  Not as an excuse of his behavior, but that is  
18                    where he is emotionally.

19       **Q.**     And you did mention that there were some factors that you  
20                    believe that you've identified that help explain that.  Could  
21                    you just please give a couple of examples of those for Judge  
22                    Rose?

23       **A.**     Yes.  I think it is significant.  I don't normally -- I  
24                    don't typically talk about an individual's sexual  
25                    orientation in my evaluations unless it's highly relevant.

DR. JENNIFER O'DONNELL - DIRECT

32

1       But in this case, I believe it's extremely relevant.

2           Mr. Roberts's sexual orientation became a factor in his  
3       development because he recognized early on that he was  
4       likely a gay man, gay boy at that point in time, but could  
5       not express that or learn how to correctly express his  
6       sexual orientation. And he described, as did his brother,  
7       the environment in the household that not only his sexual  
8       orientation but also the emotional and literal stability of  
9       the household was in jeopardy for most of his lifetime. And  
10       that is a classic pattern that will get someone stuck in a  
11       particular level of maturity.

12       **Q.**    Now, Doctor, what is your assessment of Mr. Roberts's  
13       ability as an adult to maintain appropriate relationships with  
14       people his own age?

15       **A.**    He's extremely socially awkward. He's -- he would be  
16       considered reclusive as an adult. I mean, this is a man who  
17       he went to work every day, but he didn't have an active  
18       adult interaction social life outside of any work  
19       interactions that he had.

20       **Q.**    And, Doctor, you know, since the advent of the Internet,  
21       I would assume you deal with a lot of individuals who, because  
22       of their social awkwardness, resort and turn to the Internet  
23       because it is a way for them to have interaction from a very  
24       safe distance, oftentimes from their own basement. Is that  
25       something you've seen in your work?

DR. JENNIFER O'DONNELL - DIRECT

33

1       **A.**     Interacting anonymously. It's very safe. They think  
2     it's safe. It's not.

3       **Q.**     And certainly, I believe in your evaluation you do  
4     believe that Mr. Roberts did have an addiction, an addiction  
5     to the Internet, an addiction to pornography; is that correct?

6       **A.**     Gaming, pornography, yeah.

7       **Q.**     In your experience, Doctor, are those things that can be  
8     worked through in a therapeutic environment?

9       **A.**     Yes. The research on gaming and pornography addiction  
10    is not robust; the research is not robust on that. But the  
11    research on sexual offending, inappropriate sexual  
12    behaviors, and the interventions in that is very robust.  
13    And especially in the late 1990s, we really developed some  
14    very effective protocols.

15           There is quite a bit of research that shows offenders  
16    who get a long-term, evidence-based sexual offending  
17    intervention program with monitoring over a long term, even  
18    monitoring over longer than a five-year period, will show at  
19    least a 4 to 8 percent decrease in sexual offending  
20    recidivism versus offenders who get no treatment at all,  
21    especially if these are offenders who have no history of  
22    violence. That violence factor is extremely important in  
23    predicting future recidivism.

24       **Q.**     And again in your opinion, we're not dealing with that in  
25    Mr. Roberts's case?

DR. JENNIFER O'DONNELL - DIRECT

34

1       **A.**     Correct.  We're not.

2       **Q.**     And if I could go back again to the dialectical  
3           behavioral therapy in page 8 of your evaluation, the last  
4           sentence on page 8 that begins with "Mr. Roberts," could you  
5           please read that for the record?

6       **A.**     "In my opinion, Mr. Rogers -- Mr. Roberts is a good  
7           candidate for this intervention model as it can address the  
8           interpersonal skill and emotional dysregulation deficits  
9           that I believe are the foundation for his sexual offending,  
10           and treatment will decrease the likelihood of recidivism."

11      **Q.**     Now, Doctor, are you familiar with what kind of sex  
12           offender treatment is available in the Federal Bureau of  
13           Prisons?

14      **A.**     The Bureau of Prisons does have a cognitive  
15           behavioral -- the overarching cognitive behavioral model of  
16           intervention.  I have not researched the models in the last  
17           two or three years, but I am familiar with their cognitive  
18           behavioral models.

19      **Q.**     And how important is it, in your opinion, Doctor, for  
20           someone to take advantage of therapy sooner rather than later?  
21           In other words, what would your recommendation be for  
22           Mr. Roberts to start getting this type of therapy to address  
23           the underlying causes of his behavior?

24      **A.**     Well, I'm well aware that when I write these reports,  
25           they don't often get into the prisons or the next

DR. JENNIFER O'DONNELL - DIRECT

35

1 institution. But when they do, I have been told by state  
2 prison authorities and mental health units in their state  
3 prisons that they use the information that I give them and  
4 they help enroll people earlier in those programs.

5 We know there is very strong research that says if  
6 someone fails treatment, so if they were to fail out for  
7 some reason or another, the likelihood of recidivism  
8 actually goes up. We know that that's a personality --  
9 there's personality factors about failure.

10 What we don't know is how soon after he gets in he  
11 needs the treatment. I can't tell you exactly how early, if  
12 early enrollment will help, but what we do know is the  
13 longer someone is engaged in treatment, in an effective  
14 treatment program and the longer the monitoring goes on  
15 after that the better the results are.

16 **Q.** And again, Doctor, in your opinion, in your evaluation of  
17 this defendant, is he someone who you believe, as he sits here  
18 today, is amenable to treatment?

19 **A.** I do think so, yes.

20 **Q.** Doctor, how important is it for you that Mr. Roberts has  
21 completely admitted all of his conduct?

22 **A.** The research is not strong on admission of guilt or not  
23 admission of guilt. I believe maybe we haven't been able to  
24 figure out how to measure that, in fact. So my clinical  
25 opinion, I can't tell you how important it is that he

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36

1 express guilt.

2 It is important, I believe, that he express the  
3 symptoms and how he recognizes the symptoms have interfered  
4 in his life, because that level of discomfort, discontent  
5 inside him will then give him more motivation to seek relief  
6 in treatment.

7 **Q.** And, Doctor, is it your opinion, after your evaluation of  
8 the defendant, that he does have insights into his offense  
9 behavior?

10 **A.** He absolutely understands how destructive his behavior  
11 is to himself and others.

12 **Q.** And do you believe he is willing to engage in therapy to  
13 move past his offense conduct?

14 **A.** Yes, he talked to me about trying to find his own means  
15 of therapy while he was in the jail, trying to get self help  
16 books and things like that. That's great. That's not my --  
17 I hope we can get him into an evidence-based protocol  
18 program, a valid program. But that is encouraging.

19 **Q.** Let's talk a little bit about recidivism. Obviously, the  
20 judge could sentence Mr. Roberts anywhere from 15 years to  
21 life imprisonment. Let's just assume for the moment that  
22 Mr. Roberts does not get out of federal prison for the next 16  
23 or 17 years. That would put him over 50 years of age.

24 **A.** Okay.

25 **Q.** Doctor, in the research, is there anything significant

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37

1       about recidivism rates for individuals who have attained a  
2       certain age?

3       **A.**     Yes. I talked about that a little bit in my report.

4       So I used two instruments to think about Mr. Roberts's  
5       proclivity for criminal thinking and his actuarial risk for  
6       sexual recidivism.

7               The second instrument, it starts on page 7, the Static-  
8       99, that is an actuarial instrument for recidivism. So that  
9       allows for no criminal judgment. That's what an actuarial  
10      instrument is. It's what insurance companies use to figure  
11      out, like, life insurance risk and things like that.

12              So those factors on the Static-99 -- it is actually  
13      called Static-99 because it was first published in 1999.  
14      It's been modified a couple times since then. Those factors  
15      are clear that age does have a predictive value in  
16      estimating risk. And younger men, younger men, those two  
17      factors, younger and men, do have a higher risk of  
18      recidivism.

19              Mr. Roberts is already above the cut age, the first cut  
20      age for the decrease in score. So the way the actuarial  
21      instruments work, similarly to the sentencing guidelines, is  
22      if a criteria is met, you get a point for that. There are  
23      some criteria, though, if it is met, it will deduct a point  
24      or recognize a reduction in risk.

25              So at his age of -- he's now 38. If he goes into

DR. JENNIFER O'DONNELL - CROSS

38

1 prison and is there for actually more than 12 years at this  
2 point, his score will actually decrease as long as he  
3 doesn't commit any other sexual offenses.

4 Q. And that is something that is borne out by research?

5 That's not speculative? There's enough data now to actually  
6 make those predictive recidivism rates?

11 MR. ANDERSON: Your Honor, I don't believe I have  
12 anything additional for Dr. O'Donnell.

13                   Thank you, Doctor.

14 THE COURT: All right. Now, Doctor, Ms. Rossi is  
15 going to have a few questions for you.

16 THE WITNESS: That's great.

## **CROSS-EXAMINATION**

18 BY MS. ROSSI:

19 Q. Good morning, Dr. O'Donnell.

20 A. Hi. Is it Rossi, R-O-S-S-I?

21 Q. That's correct.

22 A. Nice to meet you.

23 Q. Nice to meet you, too. Thank you for being here this  
24 morning to share some information with us.

25 I had a couple of questions in response to the direct

DR. JENNIFER O'DONNELL - CROSS

39

1 examination that Mr. Anderson just performed. He asked if  
2 your purpose was to perform a forensic evaluation, and I  
3 believe you added the caveat that it was forensic evaluation  
4 for post conviction. Did I hear that right?

5 **A.** That's correct.

6 **Q.** And I believe that he asked you, are the tests you  
7 administered to Mr. Roberts routine for forensic evaluation,  
8 and again I believe I heard you say it's routine for  
9 mitigation evaluations --

10 **A.** Yes.

11 **Q.** -- is that right?

12 **A.** Yes.

13 **Q.** So it's fair to say that if your goal was not for  
14 mitigation but to rather, let's say, have as full or  
15 comprehensive knowledge as possible about Mr. Roberts's  
16 offenses and his various factors that might make him more  
17 likely to re-offend, you may have administered different  
18 tests?

19 **A.** No, I don't think so. And I think I understand your  
20 question. Because this is not a competency evaluation, I  
21 didn't use competency --

22 **Q.** Right.

23 **A.** -- oriented testing. So that's what I was referring  
24 to.

25 **Q.** Okay.

DR. JENNIFER O'DONNELL - CROSS

40

1       **A.**     Because this is about mitigation evaluation, so we're  
2       going to do a full psychological assessment on Mr. Roberts,  
3       I used instruments that specifically go to a psychological  
4       assessment.

5       **Q.**     Right. And actually, I'd like to talk a little bit more  
6       about that. One of the tests you did was a personality  
7       assessment inventory, correct?

8       **A.**     Correct.

9       **Q.**     And that is a self-reported personality assessment  
10      instrument, right?

11      **A.**     They all are, yes.

12      **Q.**     So you are relying on what information Mr. Roberts  
13      provides?

14      **A.**     Sort of. The interesting --

15      **Q.**     Just in terms of what the test asks, it asks for  
16      information from Mr. Roberts, correct?

17      **A.**     Right. He answers it true/false.

18      **Q.**     Okay. And then you would agree with me that this type of  
19      test, specifically the PAI, it's used in a variety of legal  
20      contexts, right?

21      **A.**     Yes.

22      **Q.**     Not just criminal. In fact, it's mostly used in civil  
23      cases; isn't that right?

24      **A.**     So --

25      **Q.**     Let me ask you a different question. It is used in

DR. JENNIFER O'DONNELL - CROSS

41

1 cases, for example, when you are calculating personal injury  
2 damages for someone who is injured in an accident, that's an  
3 example when PAI might be used?

4 **A.** It could be.

5 **Q.** Or a child custody dispute, right?

6 **A.** Could be.

7 **Q.** You might -- okay.

8 Or ascertaining whether someone meets the criteria for  
9 getting Social Security Disability payments?

10 **A.** Yes.

11 **Q.** So it's fair to say that this PAI test is in no way  
12 specifically designed to evaluate sex offenders; is that fair?

13 **A.** That's correct.

14 **Q.** Okay. And same kind of question with the Interview of  
15 Risk, Need, Responsivity test, IORNS. Do you say "IORNS"?

16 **A.** I say "IORNS," yes.

17 **Q.** Okay, thank you.

18 Like the PAI, this is also a self-reported test, correct?

19 **A.** Yes.

20 **Q.** Where you rely on information that Mr. Roberts gives in  
21 response to questions?

22 **A.** That's correct.

23 **Q.** And that's a true or false test as well?

24 **A.** That's correct.

25 **Q.** On page 7 of your report, which is Defense Exhibit 1 --

DR. JENNIFER O'DONNELL - CROSS

42

1 do you have a copy of your report there with you?

2 **A.** I do.

3 **Q.** In the section where you are talking about the overall  
4 risk index, you mentioned it's comprised of three influencing  
5 variables, and after reviewing those variables you found that  
6 Roberts fell in the, quote, moderately high risk, end quote,  
7 category; is that right?

8 **A.** That's correct.

9 **Q.** How many categories are there?

10 **A.** There are five categories.

11 **Q.** So am I --

12 **A.** It starts with low and goes up.

13 **Q.** So am I correct that your conclusion is that Mr. Roberts  
14 is in the second highest risk index?

15 **A.** Correct.

16 **Q.** Okay. Just to make sure I understand the full scope of  
17 your evaluation, you would agree with me that there are  
18 additional or different tests other evaluators might have used  
19 when they were assessing Mr. Roberts?

20 **A.** Yes. Oh, yeah, there's a plethora of tests people  
21 could use.

22 **Q.** Right. So I think some of them might be the Minnesota  
23 Multiphasic Personality Inventory 2?

24 **A.** They could.

25 **Q.** The Multiphasic Sex Inventory II For Adult Men?

DR. JENNIFER O'DONNELL - CROSS

43

1       **A.**     It could have.

2       **Q.**     Or The Molester Comparison Scale?

3       **A.**     I'm not familiar with that one.

4       **Q.**     Well, it's fair to say that there are different tests out  
5     there that specifically are designed for sex offenders, and  
6     specifically male sex offenders, correct?

7       **A.**     Correct. The gold standard is the Static-99, though.

8       **Q.**     So I guess to kind of wrap this one up, you agree that in  
9     your field of expertise different experts may use different  
10    tests and may reach different conclusions?

11      **A.**     Oh, yeah.

12      **Q.**     So I'd like to talk a little bit about the facts you  
13    relied on in preparing your report.

14      **A.**     Okay.

15      **Q.**     So at the time you authored this report, which was in  
16    June; is that right?

17      **A.**     Yes. So I saw him in June, June 16th of 2023, and then  
18    I finished the report July 3rd.

19      **Q.**     Okay. So between that time of June 16th and July 3rd  
20    when you were working on this report, were you aware  
21    specifically that Mr. Roberts had produced child pornography  
22    involving 177 different minors?

23      **A.**     I had the presentence investigation report, yes.

24      **Q.**     Right. And that number 177 is not in there, correct?

25      **A.**     I don't recall the number of victims, you're correct.

DR. JENNIFER O'DONNELL - CROSS

44

1       **Q.**     Okay. Well, I will tell you, it's not in there. So this  
2        is new information, the exact number.

3       **A.**     I actually got -- was given your paperwork for today,  
4        the six exhibits, I think. So it might have been in there.

5       **Q.**     Yes.

6       **A.**     Okay.

7       **Q.**     I was not aware that you were that also relying on my  
8        exhibits as part of your testimony.

9       **A.**     I was given it yesterday, so --

10      **Q.**     But when you authored your report, it's fair to say you  
11        did not have that information?

12      **A.**     I did not have that number, that's correct.

13      **Q.**     Okay. And, again, when you wrote this report, you were  
14        not aware that Roberts himself is personally responsible for  
15        producing or causing other minors to produce 718 videos and  
16        images of child pornography?

17      **A.**     I did not include that number in my report, you're  
18        right.

19      **Q.**     I'd like to refer again to the PSI. You mentioned you  
20        had the chance to review that. Page 24 of the PSI, if I could  
21        give a copy of that to you.

22      **A.**     Okay.

23                   THE COURT: What are we referring to?

24                   MS. ROSSI: The presentence investigation report.

25                   THE COURT: You have that, don't you, Mr. Anderson,

DR. JENNIFER O'DONNELL - CROSS

45

1       in front of you?

2                    MR. ANDERSON: I do. Thank you.

3                    THE WITNESS: Is this on the right page?

4        BY MS. ROSSI:

5        **Q.**    It is. It should be page 24 of 49 at the top.

6        **A.**    Okay. Oh, 24 of 49, okay.

7        **Q.**    Yes. So if you go to paragraph 73, the first two  
8        sentences are, "On two separate occasions in the early 2000s,  
9        two of Roberts's then toddler-aged relatives made statements  
10       indicating Roberts had engaged in sexually explicit conduct  
11       with them. The Clark County Sheriff's Office investigated the  
12       allegations, and Roberts declined to provide any statements to  
13       deputies. No charges were filed in this case."

14                  Do you recall reading that in the PSI?

15       **A.**    Yes.

16       **Q.**    Now, turning to your report, on page 7, paragraph 3 --  
17       and again, that's Defense Exhibit 1 -- you report that the  
18       defendant does not have a history of early criminal behavior  
19       or delinquent juvenile behavior.

20                  So I want to understand, are you aware that that incident  
21       in the early 2000s was actually when Mr. Roberts was a  
22       juvenile?

23       **A.**    But he was not convicted, isn't that correct?

24       **Q.**    That is correct. So you are only counting convictions?

25       **A.**    That's right.

DR. JENNIFER O'DONNELL - CROSS

46

1       **Q.**     Okay. So any allegations of contact offenses are not  
2        considered in your evaluation?

3       **A.**     They can't be.

4       **Q.**     Okay. And I understand that, but that's a limitation,  
5        correct?

6       **A.**     That is a limitation, correct.

7       **Q.**     And you would agree with me that sexual offenses are, the  
8        research shows, one of the most underreported crimes to begin  
9        with, right?

10      **A.**     That's correct.

11      **Q.**     And in addition to being one of the most underreported  
12        crimes, they are also one of the most underreported prosecuted  
13        crimes, correct?

14      **A.**     Unfortunately.

15      **Q.**     Yes. So you would agree with me, then, that in this type  
16        of offense we're dealing with a dearth of data in terms of  
17        evaluating what someone's behavior actually is, just because  
18        of the nature of the offense?

19      **A.**     Can you rephrase that for me?

20      **Q.**     Absolutely.

21      **A.**     Thank you.

22      **Q.**     So sex offenses are underreported?

23      **A.**     Yes.

24      **Q.**     They are underprosecuted?

25      **A.**     Yes.

DR. JENNIFER O'DONNELL - CROSS

47

1       **Q.**     Normally when you are assessing someone for risk, it's  
2     important to know what criminal convictions they have in their  
3     past, right?

4       **A.**     Correct.

5       **Q.**     So if you are evaluating someone for sexual offense risk,  
6     just because of the nature of those crimes and the  
7     underreporting and underprosecution, it's fair to say that  
8     there is less data, there's going to be less convictions for  
9     you to refer to or use in your assessment?

10      **A.**     Yes.

11      **Q.**     All right. So turning to page 8 of your report, you  
12     write -- and let me see if I can find exactly where you write  
13     this.

14                Okay, the second paragraph under the Summary section.

15      **A.**     Yes.

16      **Q.**     "Mr. Roberts is a 38-year-old gay man who is hiding his  
17     sexual orientation from his family, friends, and community out  
18     of shame and fear of retaliation."

19                And then later in that paragraph you write, quote, "The  
20     defendant was, therefore, unable to explore his sexual  
21     orientation and learn appropriate ways to express himself and  
22     his sexual and emotional needs. Unfortunately became fixated  
23     on pubescent boys and turned to very immature behaviors as  
24     well," end quote. And did I get that right?

25      **A.**     Yes.

DR. JENNIFER O'DONNELL - CROSS

48

1       **Q.**     Okay. Are you aware that Roberts's production and  
2     contact offenses, in fact, involved prepubescent boys and  
3     girls?

4       **A.**     There was some references, as you said, in the PSI.  
5     However, convictions.

6       **Q.**     Correct. So if it were the case that he had at least 11  
7     contact offenses with minors as young as 3 years old spanning  
8     to as old as 13 when the contact offenses began, that not  
9     having convictions for those offenses but having committed  
10    them would have been important for you to know in forming an  
11    opinion?

12      **A.**     Had he been convicted of them, I would have been able  
13    to include them in the record.

14      **Q.**     So you are not taking that into account essentially when  
15    you reach your conclusions?

16      **A.**     That's not completely true. I absolutely use my  
17    clinical judgment on his need for intervention and how  
18    serious of a case this is. So, in fact, I did consider it.  
19    I couldn't include it in actuarial instruments or, as you  
20    said, in the PAI. Is certainly showed up in the IORNS.

21            But in the reality, it's part like a bowl of wax,  
22    right. And he absolutely needs an intervention to stop  
23    these behaviors, and that's sort of where I ended up. So  
24    they are sort of included. I don't want you to think that I  
25    have excluded any victims in any way.

DR. JENNIFER O'DONNELL - CROSS

49

1       **Q.**     No, I appreciate that.

2       **A.**     The seriousness was never -- I never took that for  
3                    granted.

4       **Q.**     Okay. But it's fair to say that you just didn't have the  
5                    information about these contact offenses that were alleged to  
6                    have occurred, correct? Other than what's mentioned in the  
7                    PSI.

8       **A.**     Other than what's mentioned in the PSI.

9       **Q.**     So, for example, you didn't see police reports that his  
10                  3-year-old relative was taken to a doctor and the doctor  
11                  concluded that it was probable that she had been sexually  
12                  assaulted in exactly the way the children had described he had  
13                  done? You didn't have access to that information, right?

14      **A.**     Correct.

15      **Q.**     So I want to talk to you a little bit about Mr. Roberts's  
16                  sexuality. I think you took, you know, pains to address that  
17                  in your report, as well as in your testimony today, and I do  
18                  appreciate that very much. But I want to get something -- I  
19                  want to make sure I understand it correctly.

20                  You would agree with me that being sexually attracted to  
21                  a same-sex partner is not the same thing as being sexually  
22                  attracted to prepubescent children, right?

23      **A.**     Absolutely.

24      **Q.**     So turning to page 3 of your report, I believe that you  
25                  wrote, quote, "Still, his only true long-standing romantic

DR. JENNIFER O'DONNELL - CROSS

50

1       relationship was with a man several years younger than him,"  
2       end quote.

3           Is that right?

4       **A.**    Yes. And I found out earlier the exact nature of that,  
5       so --

6       **Q.**    Okay. So let me go ahead and ask you a little bit about  
7       this.

8       **A.**    Okay.

9       **Q.**    Is it correct that Mr. Roberts did not tell you the  
10      nature of that relationship, which is that it began when the  
11      minor victim was 13 and Mr. Roberts was 32?

12      **A.**    I did not know that that's when it began. Thank you.

13      **Q.**    And did you know that it spanned five years while the  
14      minor was, in fact, a minor?

15      **A.**    I did know that.

16      **Q.**    Okay. You would agree with me that a relationship  
17      between a 13-year-old child and a 32-year-old man could not be  
18      accurately described as a romantic relationship, right?

19      **A.**    Not a consensual relationship, that's exactly right.

20      **Q.**    Okay. I wanted to actually get clarification on  
21      something in your report on page 8. You wrote, quote, "His  
22      male victims are strangers and unrelated, and those are known  
23      risk factors for recidivism," end quote. Do you see where  
24      that is? It's in the top paragraph on the page.

25      **A.**    Yeah, I do know that.

DR. JENNIFER O'DONNELL - CROSS

51

1       **Q.**     So forgive me. I think there is some ambiguity here with  
2     what exactly you mean. Are you saying that the victims are  
3     strangers and unrelated to each other, or are you saying the  
4     victims are strangers unrelated to Mr. Roberts?

5       **A.**     Unrelated to Mr. Roberts.

6       **Q.**     Okay. I just wanted to make sure I understood that  
7     correctly.

8                 So also on page 8 of your report -- and I think you  
9     talked about this a little bit with Mr. Anderson -- you wrote  
10    that "The deciding factor about who was likely to re-offend,  
11    even for sex offenders, is typically criminogenic behavior,  
12    such as --

13                 (Court Reporter interruption for speed.)

14       **Q.**     "-- a history of criminogenic behaviors, such as a  
15    history of criminal behavior, antisocial personality,  
16    propensity for violence," end quote.

17                 And then you concluded that Mr. Roberts does not have a  
18    history of those criminogenic factors; is that right?

19       **A.**     That's right.

20       **Q.**     And is that because you were defining criminal behavior  
21    and propensity for violence in a narrow way, such as previous  
22    convictions?

23       **A.**     In the actuarial sense.

24       **Q.**     Okay. So it's not taking into account his previous  
25    contact offenses with minors that did not result in

DR. JENNIFER O'DONNELL - CROSS

52

1       convictions?

2                   THE COURT:  Was that an answer?

3                   THE WITNESS:  So it is not taking into account any  
4                   action that he was not convicted of.  That's --

5       BY MS. ROSSI:

6       **Q.**    Okay.

7       **A.**    So that's the thing about an actuarial instrument,  
8                   right.  It doesn't have -- there is no wiggle room in the  
9                   interpretation of the criteria.

10      **Q.**    And I really do appreciate your explaining that to me.  I  
11           want to make sure that I understand essentially the parameters  
12           of the data you are working with in reaching these  
13           conclusions, and the parameters of that data is limited to  
14           criminal convictions?

15      **A.**    Correct.

16      **Q.**    I also want to talk about how sex offenders are generally  
17           classified from study to study.  Would you agree with me that  
18           that term can mean different things in different studies and  
19           may include public indecency or voyeurism?  In some cases,  
20           they may only include rape, or child molestation in others?

21      **A.**    That's correct.  The research varies significantly.  
22           And that's what I was talking about we were trying to get a  
23           handle on, on, you know, rape is a violent offense.  Is  
24           voyeurism a violent offense?  I mean, that's where the gray  
25           area becomes in the research.

DR. JENNIFER O'DONNELL - CROSS

53

1       **Q.**     Right. And again, you are talking about convictions, not  
2     behavior?

3       **A.**     In the research, we can talk about behavior.

4       **Q.**     Oh, you can. Great. Well, then, I would like to know if  
5     the research takes into account behavior such as kidnapping  
6     and murder, whether or not it results in a conviction, and  
7     does it recognize it while they may appear on their face to be  
8     non-sexual in nature, that they can, in fact, have a sexual  
9     motivation for certain factors?

10      **A.**     Yes, it does.

11      **Q.**     So you would agree with me that the lack of criminal  
12     convictions for what's on its face apparently sexual behavior  
13     is not necessarily indicative of whether or not a sexual  
14     offender is likely to re-offend sexually?

15      **A.**     So when we're doing these kinds of assessments, if we  
16     can determine that the conviction was sexually related, you  
17     know, someone breaks into an apartment to steal underwear --

18      **Q.**     Um-hmm.

19      **A.**     -- or to rape someone, then that can count in the  
20     actuarial model. There are ways that that conviction can  
21     count.

22      **Q.**     Okay. And does that differ from study to study or based  
23     on what the study's looking for?

24      **A.**     So the reason that I use the Static is that they have  
25     adhered to very specific criteria for a very long time now,

DR. JENNIFER O'DONNELL - CROSS

54

1 and that the criteria are solid. Other instruments you  
2 mentioned -- I forget which one --

3 Q. Minnesota Multiphasic Personality --

4 A. That's not it. The one about the molesters something.

5 Q. Child molestation?

6 A. Yeah. So a lot of the less often used instruments have  
7 either broader or narrower definitions, and it's one of the  
8 reasons I don't use them, because I tend -- well, I always  
9 work in a sort of broad field. I can get -- any kind of an  
10 evaluation can come my way. So I want to use the instrument  
11 that's most widely used in that circumstance. And that's  
12 why I stick with the Static.

13 But to your point, the research will have to -- a good  
14 research publication will have to clearly define those  
15 categories, and those categories do change from research to  
16 research.

17 Q. And so it sounds like you are testifying that it's  
18 important to know, in each specific research paper you are  
19 quoting or citing or using, exactly what the definitions are,  
20 exactly what's being actually measured and tested?

21 A. That's correct.

22 Q. Okay. And just to finish up, I know you spoke with  
23 Mr. Roberts for four hours one on one; is that right?

24 A. Yeah, I did.

25 Q. Okay. Just to make sure I understand, you did not

DR. JENNIFER O'DONNELL - REDIRECT

55

1        actually speak to any victims in this case, right?

2        **A.**    Oh, no.

3        **Q.**    And you didn't speak to any law enforcement officers who  
4        had knowledge of the case, right?

5        **A.**    All I had was the -- I had -- I asked for the  
6        discovery, and I got the presentence investigation, so --

7        **Q.**    Okay. Would you agree with me that receiving the full  
8        discovery might aid in you forming an opinion?

9        **A.**    So that's also a great debate in my field.

10      **Q.**    I said "might aid."

11      **A.**    So maybe.

12      **Q.**    Okay.

13      **A.**    I'll throw you a maybe.

14      **Q.**    Fair enough. Fair enough.

15            I don't think I have any other questions, Dr. O'Donnell.

16            Thank you very much for your time.

17      **A.**    You're welcome.

18            THE COURT: Mr. Anderson, anything?

19            MR. ANDERSON: Just very briefly based on counsel's  
20        questions.

21            THE COURT: All right.

22                            **REDIRECT EXAMINATION**

23            BY MR. ANDERSON:

24      **Q.**    Doctor, Ms. Rossi had discussed with you that -- and you  
25        are aware -- that there are a number of minor victims in this

DR. JENNIFER O'DONNELL - REDIRECT

56

1 case that Mr. Roberts communicated with over the Internet; is  
2 that correct?

3 **A.** That's correct. I've been aware of that the whole  
4 time.

5 **Q.** Right. And Mr. Roberts has acknowledged that during  
6 these communications with these minor adolescent boys the  
7 majority of them were adolescent boys. There may have been  
8 some that were under the age of 11.

9 MR. ANDERSON: Judge, I think that Ms. Kinzig will  
10 get into that. But the vast majority are between, I believe,  
11 the ages of 11 and 14?

12 MS. ROSSI: Your Honor, and I apologize to  
13 Mr. Anderson. I just want to be clear that that is not going  
14 to be the government's evidence when Agent Kinzig testifies.  
15 So if you want to rephrase your question, that will not be our  
16 position.

17 BY MR. ANDERSON:

18 **Q.** Nevertheless, we are talking about interactions that  
19 Mr. Roberts had with boys, from various ages.

20 **A.** Children.

21 **Q.** Children, okay. And you are aware of that?

22 **A.** Absolutely.

23 **Q.** And you're aware of the nature of those interactions.  
24 Sometimes Mr. Roberts deceived them and pretended to be a  
25 teenage girl?

1           A.     Absolutely.

2 Q. Now, of course we're not discounting each individual  
3 victim, and each individual victim deserves to be heard. But  
4 from a clinical perspective, if that number was 100 and  
5 because of the nature of the Internet and how easy it is to  
6 connect with children on the Internet, if that number was 100  
7 or if that number was 600 -- and I'm just throwing out  
8 numbers -- does that number at a certain point change the kind  
9 of therapy that Mr. Roberts would need to engage in?

10       A.     In fact, if the number were 4 versus 100, it wouldn't  
11       change my conclusion about the kind of therapy that  
12       Mr. Roberts needs.

13 Q. And from your evaluation of Mr. Roberts, although this  
14 conduct that he engaged in on the Internet is clearly improper  
15 and clearly illegal, it is not the type of violent sexual  
16 predation that would concern you from a clinical standpoint;  
17 is that fair?

18 A. That's a little strong. So can I say it in my way?

19 Q. Please.

20 A. So he is not someone who is inclined to use physical  
21 violence against his victim, other than sexual violence is  
22 violence. I'm going to put that parenthetical over there.  
23 He is not someone who's inclined to use physical violence.  
24 I talked about the guy that breaks in, right. And that  
25 tells me, that -- the research tells me, not Mr. Roberts,

DR. JENNIFER O'DONNELL - REDIRECT

58

1 not his self report, but the research tells me that without  
2 that physical violence component, we are not looking at a  
3 sadistic psychopathic offender. We are looking at a  
4 habitual offender whose psychological problems,  
5 psychological issues are contributing to this maladapted  
6 behavior. And so that tells me the kind of therapy -- which  
7 was actually the question. That's what a mitigation  
8 question is, is what kind of therapy is needed to prevent  
9 this recidivism or to decrease recidivism, if possible.

10 And so sorting him from a physically violent group of  
11 individuals -- rapists, kidnappers, murderers -- into the  
12 production category tells me the kind of therapy that will  
13 most likely be the most effective for him.

14 Q. Doctor, thank you for clarifying that.

15 MR. ANDERSON: I have nothing additional.

16 MS. ROSSI: Nothing, Your Honor. Thank you.

17 THE COURT: Doctor, I just have a couple questions.

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: We are talking about these different  
20 tests, and the analytical test is what?

21 THE WITNESS: The actuarial test --

22 THE COURT: Actuarial.

23 THE WITNESS: -- is the Static-99.

24 THE COURT: And the Static-99 is the test that leads  
25 you or indicates to you a recidivism rate?

DR. JENNIFER O'DONNELL - REDIRECT

59

1                   THE WITNESS: Correct. The likely recidivism, yes.

2                   Do you want me to explain that?

3                   THE COURT: No, I think I understand.

4                   THE WITNESS: Perfect.

5                   THE COURT: Now, we've talked about a lot of  
6                   information here. When that Static-99 was done, performed,  
7                   whatever, what extent of the information concerning  
8                   Mr. Roberts's past history was fed into that? You had the two  
9                   convictions?

10                  THE WITNESS: No. Those two convictions are  
11                  considered -- using the actuarial instrument and following the  
12                  rules of the actuarial instrument, those convictions are  
13                  considered the index offense.

14                  THE COURT: All right.

15                  THE WITNESS: So those convictions -- so let me say  
16                  it this way: If we did that Static-99 for another reason 5  
17                  years or 20 years from now, those convictions would count, but  
18                  they wouldn't significantly raise his risk factor because of  
19                  the way it scores.

20                  THE COURT: I guess my bottom line is, I've listened  
21                  to a number of questions from both Mr. Anderson and Ms. Rossi.  
22                  It appears -- I'm somewhat concerned with regard to these  
23                  tests that were performed and the extent to which those tests  
24                  reflected what I've got here in front of me.

25                  THE WITNESS: I understand, Your Honor.

DR. JENNIFER O'DONNELL - REDIRECT

60

1                   THE COURT: Yeah.

2                   THE WITNESS: I understand.

3                   THE COURT: There seems to be a wide --

4                   THE WITNESS: So --

5                   THE COURT: That's a question. Go ahead.

6                   THE WITNESS: I thought it was. So, as I said to  
7                   Mr. Anderson, I did consider the magnitude of the repetition,  
8                   this pattern of behavior. I'm not allowed to consider it on  
9                   the actuarial instrument, but I am allowed to consider it in  
10                  my clinical judgment and in my conclusions.

11                  THE COURT: Where did you come up with the -- where  
12                  did you come up with these percentages of recidivism?

13                  THE WITNESS: Those are from the actual instrument.

14                  THE COURT: So you weren't allowed to use it there?

15                  THE WITNESS: Not there.

16                  THE COURT: So basically, when we talk about 5.8 to  
17                  7 to, I don't know, 6 percent, that's a result of that test  
18                  based upon the information that was fed into it?

19                  THE WITNESS: Correct.

20                  THE COURT: I have nothing further.

21                  Anything?

22                  MS. ROSSI: No, Your Honor. Thank you.

23                  THE COURT: Mr. Anderson?

24                  MR. ANDERSON: No, Judge. Thank you.

25                  THE COURT: Doctor, thank you very much.

DR. JENNIFER O'DONNELL - REDIRECT

61

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: You're excused.

3 THE WITNESS: Thank you.

4 THE COURT: Mr. Anderson, have you formally moved  
5 for the admission of that?

6 MR. ANDERSON: Judge, I was planning on attaching  
7 the evaluation with my post-hearing submission.

8 THE COURT: That's fine.

9 MR. ANDERSON: So I just marked it as  
10 identification, but I --

11 THE COURT: And I'm assuming we are not going to  
12 hear any objection from Ms. Rossi in any type of a response or  
13 anything, right?

14 MS. ROSSI: No objection to its admission.

15 THE COURT: Okay. Mr. Anderson, anything further?

16 MR. ANDERSON: No additional witnesses, Judge.

17 Thank you.

18 THE COURT: And again, understanding that I am  
19 reserving your right, your opportunity and, of course,  
20 Mr. Roberts's opportunity to address the Court and make  
21 argument.

22 So we now turn to Ms. Rossi.

23 MS. ROSSI: Thank you very much, Your Honor. I do  
24 have one exhibit that is a six-slide PowerPoint. If I could  
25 have a brief five-minute recess to make sure my computer works

ANDREA KINZIG - DIRECT

62

1 with the courtroom technology.

2 THE COURT: We will give you a brief, five-minute  
3 recess.

4 Mr. Anderson, you have seen this?

5 MR. ANDERSON: I have, Judge. Thank you.

6 THE COURT: Any objection to it?

7 MR. ANDERSON: No.

8 THE COURT: We'll take a five-minute recess.

9 MS. ROSSI: Thank you, Judge.

10 THE COURTROOM DEPUTY: All rise. This court stands  
11 in recess.

12 (Recess at 10:39 a.m. until 10:49 a.m.)

13 THE COURT: We are back on the record.

14 Ms. Rossi.

15 MS. ROSSI: Thank you, Your Honor. At this time the  
16 United States would like to call FBI Special Agent Andrea  
17 Kinzig to the stand.

18 THE COURT: All right. Agent Kinzig, if you will  
19 come up.

20 **ANDREA KINZIG, PLAINTIFF'S WITNESS, SWORN**

21 THE COURT: Ms. Kinzig, you are familiar with the  
22 courtroom. Please try to keep your voice up so that everybody  
23 can hear you. And let's all talk moderately. Slow down.

24 **DIRECT EXAMINATION**

25 BY MS. ROSSI:

ANDREA KINZIG - DIRECT

63

1       **Q.**     Good morning, Agent Kinzig.

2       **A.**     Good morning.

3       **Q.**     Could you please spell your last name for the record?

4       **A.**     K-I-N-Z-I-G.

5       **Q.**     And where do you work?

6       **A.**     The Federal Bureau of Investigation. I am currently  
7                 assigned to the Dayton Residency Agency of the Cincinnati  
8                 Field Office.

9       **Q.**     Are you a special agent?

10      **A.**     I am.

11      **Q.**     Can you generally describe what are your responsibilities  
12                 as a special agent with the FBI?

13      **A.**     I primarily work crimes against children and human  
14                 trafficking matters.

15      **Q.**     Approximately how long have you been involved in  
16                 investigating crimes against children?

17      **A.**     Since approximately 2012.

18      **Q.**     And you've received specialized training in this type of  
19                 investigative work?

20      **A.**     I have.

21      **Q.**     I would like to turn your attention to the screen. Is  
22                 the slide showing?

23      **A.**     Yes.

24      **Q.**     Thank you. How many minors during your investigation did  
25                 you determine that Roberts produced or coerced or enticed

ANDREA KINZIG - DIRECT

64

1       those minors into producing child pornography?

2       **A.**     Approximately 177.

3       **Q.**     Of those minors, the 177, how many have you been able to  
4       positively identify as of today's date?

5       **A.**     Approximately 57.

6       **Q.**     When was your most recent identification?

7       **A.**     I got the confirmation yesterday. I believe the agent  
8       conducted the interview two days ago, but she informed me of  
9       the results yesterday.

10      **Q.**     So it's fair to say the investigation is ongoing as FBI  
11       tries to determine all of the 177 victims?

12      **A.**     Yes. There will be some victims who we won't be able  
13       to identify based on lack of identifying information or the  
14       fact that they live internationally, but we do continue our  
15       efforts.

16      **Q.**     What is the total number of images or videos that  
17       Mr. Roberts produced?

18      **A.**     Approximately 718, and that also includes ones that he  
19       produced as well as coerced and enticed minors to produce,  
20       including both videos and images.

21      **Q.**     Of those 718 videos and images, how many of those  
22       involved one or more of the 57 identified minors?

23      **A.**     Approximately 505 of those files involved fully  
24       identified victims.

25      **Q.**     How many child pornography investigations would you say

ANDREA KINZIG - DIRECT

65

1       you've conducted, a rough ballpark estimate?

2       **A.**     I'd say over 100 in the past 11 years.

3       **Q.**     Where would you say this case ranks in terms of your  
4           experience investigating someone producing images?

5       **A.**     It's always difficult to rank producers of child  
6           pornography because all of the offenses are horrible in  
7           different ways. But given the fact that this case involves  
8           a defendant who had multiple contact offenses with victims  
9           as young as toddlers, produced child pornography involving  
10          over 100 victims, and coerced and enticed hundreds of  
11          victims over long periods of time to produce child  
12          pornography, including victims as young as seven, I mean, I  
13          would say that this is in the top 5 to 10 percent of most  
14          serious offenders that I've investigated.

15       **Q.**     You were here when the defense expert witness,  
16          Dr. O'Donnell, testified earlier this morning, right?

17       **A.**     I was.

18       **Q.**     Did you hear Dr. O'Donnell describe the defendant's  
19          offenses involving, quote, "teenage boys," end quote, between  
20          the ages of, quote, "11 to 14 or 15," end quote? Did you hear  
21          her testify to that?

22       **A.**     I did.

23       **Q.**     Do you agree with the accuracy of that characterization?

24       **A.**     That there certainly were victims in that age range,  
25          but that does not include the -- the victims that have been

ANDREA KINZIG - DIRECT

66

1       identified range in ages of 6 to 17 years old for production  
2       of child pornography victims as well as contact victims as  
3       young as toddlers.

4       **Q.**      So you just mentioned the range in age from 6 years old  
5       to 17 years old.  Was there anything particularly egregious  
6       about Mr. Roberts' conduct with the six-year-old victim you've  
7       identified?

8       **A.**      Yes.  The six-year-old victim who's identified as Minor  
9       SS, that is a particularly young and vulnerable age of a  
10       victim to exploit online.  Mr. Roberts also coerced and  
11       enticed this minor to engage in sexually explicit contact  
12       via the Omegle application, which is an anonymous messenger  
13       application that allows users to exchange simultaneous text  
14       and video chats.  During that simultaneous text and video  
15       chat via Omegle, which occurred around September 2021,  
16       Mr. Roberts coerced and enticed Minor SS, who again is six  
17       years old, to perform oral sex on his seven-year-old  
18       brother, Minor TT.  And video recorded or screen recorded  
19       that chat and saved it to his external hard drive.

20       **Q.**      Was this the only time you discovered that Mr. Roberts  
21       coerced two brothers into performing sex acts on each other  
22       for his benefit?

23       **A.**      No.  There were also two other siblings who he coerced  
24       and enticed to engage in sexually explicit conduct with each  
25       other.  Those would be Minors Q and R, who were

ANDREA KINZIG - DIRECT

67

1       approximately 9 and 13 years old at the time. Mr. Roberts  
2       communicated with these two minors via the Skype live video  
3       chatting application and recorded the chats with the screen  
4       recording application. During that chat, he coerced and  
5       enticed the two minors to perform oral sex on each other and  
6       to engage in anal sexual intercourse with each other.

7       **Q.**      And to be clear, Mr. Roberts video recorded this abuse?

8       **A.**      Yes.

9       **Q.**      Based on your training and experience, is there  
10       additional trauma that is likely to result with the victims if  
11       they are siblings being coerced into engaging in sexual acts  
12       with each other?

13       **A.**      There are long-term effects that are known to be  
14       involved in sibling incest, such as PTSD, anxiety,  
15       depression, self-harming behavior, substance abuse, sexual  
16       deviancy, to name a few.

17       **Q.**      Is it fair to say that that might influence the brothers'  
18       lifelong relationship with each other moving forward?

19       **A.**      It would. And at least one of the brothers has  
20       exhibited behavioral problems in his teenage years. You  
21       know, I can't say for sure that it's the result of this  
22       sibling incest, but it certainly is possible.

23       **Q.**      How many different states did the identified victims live  
24       in?

25       **A.**      Approximately 25 for the fully identified victims.

ANDREA KINZIG - DIRECT

68

1       There are -- the unidentified victims, there are results of  
2       administrative subpoenas that have been issued that indicate  
3       that some of the unidentified victims live in other  
4       countries, such as United Kingdom, Sweden, and Australia, to  
5       again just name a few.

6       **Q.**      During your investigation, did you learn whether  
7       Mr. Roberts shared any of his child pornography with others?

8       **A.**      Yes. He distributed child pornography to at least four  
9       other individuals, distributed a total of approximately 29  
10       files. These files included images depicting Minors HZ and  
11       JJ, which were files that those minors produced and sent to  
12       Roberts at his request, as well as other child pornography  
13       files.

14       **Q.**      So if I'm understanding you correctly, he actually  
15       distributed to others the child pornography he had personally  
16       caused to be produced?

17       **A.**      Correct.

18       **Q.**      Did I hear you right that -- or excuse me. Have I asked  
19       you the number of child pornography files Roberts possessed  
20       and in what capacity or in what ways he possessed those  
21       images?

22       **A.**      He possessed over 11,000 images and videos of child  
23       pornography on a computer and iPod, as well as an external  
24       hard drive, that were all recovered from his residence in  
25       February 2022 pursuant to a search warrant.

ANDREA KINZIG - DIRECT

69

1       **Q.**     Is it correct that there is an additional electronic  
2     device that as of today you've not been able to review the  
3     contents of?

4       **A.**     That is correct. There was an iPhone that was seized  
5     from his person pursuant to the February 2022 search warrant  
6     that has not been examined yet. When this device was  
7     seized, officers requested Mr. Roberts to turn over the  
8     device to them pursuant to the search warrant. Instead of  
9     immediately turning it over, he powered off the device,  
10    which prevented officers from both obtaining a search  
11    warrant to use biometrics to unlock the device, as well as  
12    to submit it for a type of extraction that can be performed  
13    on powered-on devices that provides results or most of the  
14    contents but not all of the contents of the device.

15           He was asked for the password for the device. He  
16    declined to provide it. So, therefore, it had to be  
17    submitted to a forensic procedure that is kind of a slow  
18    brute force process of cracking the pass code.

19           It has the -- it was submitted for that forensic  
20    procedure in June of 2022 and has been running since that  
21    time. I was informed by the computer examiner just  
22    yesterday that -- I assume it was yesterday -- that the  
23    password had been discovered based on that forensic  
24    procedure, and he was in the process of performing a  
25    forensic extraction of the device.

ANDREA KINZIG - DIRECT

70

1           So any child pornography files that would have -- that  
2        would be located on what appear to be his primary iPhone  
3        have not been discovered at this time.

4           Based on Roberts's long history of child pornography  
5        activities, use of multiple devices to store child  
6        pornography, use of multiple electronic accounts and his  
7        declination to provide the pass code to it, I believe it's  
8        likely that that device has more child pornography files and  
9        more victims on it.

10       **Q.**    So putting aside the unknown files on this phone, of the  
11      11,000 files that you have been able to review, did any of  
12      those files contain particularly young victims or particularly  
13      violent or sadomasochistic conduct?

14       **A.**    Yes, there were files that included infants or toddlers  
15      and sadistic or masochistic abuse.

16       **Q.**    Okay. I'd like to talk a little bit about the victims  
17      that Mr. Roberts targeted. Do you see Slide 3 presented on  
18      the screen in front of you?

19       **A.**    I do.

20       **Q.**    Is what's contained on this slide accurate in terms of  
21      what specific vulnerabilities some of his victims had?

22       **A.**    Yes. This is a sample of some of the vulnerable  
23      characteristics that some of the minors had. They don't  
24      include all of the vulnerable characteristics but, again,  
25      just an example.

ANDREA KINZIG - DIRECT

71

1       **Q.**     As an example, what's a vulnerable characteristic that's  
2     not included in this slide that you also observed?

3       **A.**     There was at least one other victim who had experienced  
4     prior sexual abuse. There were victims who had substance  
5     abuse problems. There were victims who came from  
6     impoverished or broken homes. Again, just naming some other  
7     examples.

8       **Q.**     Mr. Roberts's conduct occurred in part during the  
9     COVID-19 pandemic; is that correct?

10      **A.**     Yes.

11      **Q.**     In your opinion, based on your review of your  
12     investigation, did he take advantage of the COVID-19 pandemic  
13     to continue his abuse?

14      **A.**     Yes. One of the social media applications that  
15     Mr. Roberts did use to communicate with minors and to coerce  
16     and entice minors to produce child pornography was the  
17     Omegle application, which, again, is the anonymous messenger  
18     application.

19                 Mr. Roberts used the Omegle application during the  
20     approximate time period of April 2019 through April 2021, so  
21     that the start of that time period predates the COVID  
22     pandemic by about six months in the United States but kind  
23     of substantially reflects the period of the lockdown in most  
24     states for the COVID pandemic.

25                 I know that many minors during the COVID pandemic were

ANDREA KINZIG - DIRECT

72

1       home much more frequently with little to no parental  
2       supervision and had much more computer access for remote  
3       learning and remote socialization.

4               During that time period that Mr. Roberts used the  
5       Omegle application, I was able to see and determine that he  
6       was able to communicate with substantially more minors than  
7       the other -- than what he used other applications during  
8       different time periods.

9               Specifically, just again in comparing the use of this  
10      application, the Omegle application to other applications, I  
11      saw that he was able to communicate with at least six times  
12      more minors than he had with any other application; that he  
13      was able to produce at least two times more child  
14      pornography than any other application; and he was able to  
15      communicate with significantly younger minors than other  
16      applications, including minors as young as six and seven,  
17      Minors SS and TT that we previously talked about.

18      **Q.**      Thank you. I've now put on the screen in front of you  
19      the next slide with the topics Roberts's attempted and actual  
20      contact offenses.

21               THE COURT: Ms. Rossi, just to clarify, this is all  
22      part of the government's exhibit?

23               MS. ROSSI: This slide is its own exhibit. It's --  
24      the slide show is Exhibit 8.

25               THE COURT: So we are referring to Exhibit 8?

ANDREA KINZIG - DIRECT

73

1                   MS. ROSSI: I apologize, Your Honor. You are  
2 absolutely correct.

3                   THE COURT: So for the purposes of the record,  
4 Exhibit 8 is basically the slides that have been displayed and  
5 have been testified to up to this point in time?

6                   MS. ROSSI: That is correct, Your Honor. Thank you.

7                   THE COURT: So we're now talking about Exhibit 8 and  
8 slide what?

9                   MS. ROSSI: 4.

10                  THE COURT: 4.

11                  MS. ROSSI: Thank you so much, Your Honor.

12                  BY MS. ROSSI:

13                  **Q.** Agent Kinzig, based on your investigation, how many  
14 different victims of hands-on offenses, meaning victims that  
15 Mr. Roberts conducted hands-on offenses against, have you  
16 identified?

17                  **A.** If you include both actual contact offenses as well as  
18 attempted or grooming behaviors, attempted offenses or  
19 grooming behaviors that Mr. Roberts engaged in with minors,  
20 I determined it to be 11. That includes five toddler-age  
21 relatives who are referred as Minors 1 through 5. His  
22 cousin, Minor A, who was 11 to 12 years old at the time of  
23 the exploitation; a online acquaintance, Minor E, who he  
24 later developed a personal relationship with. Minor E was  
25 13 to 18 years old at the time of the abuse; a nephew of his

ANDREA KINZIG - DIRECT

74

1       roommate, who was referred to as Minor YY and was 9 to 13  
2       years old at the time of the abuse; an unknown female who  
3       was sleeping in his residence when Mr. Roberts took erotic  
4       photographs of her; and then two minor males, Minors 6 and  
5       7, who were 11 and 8 years old at the time of the conduct  
6       that Mr. Roberts engaged in contact or grooming behaviors  
7       with while working as a cashier.

8           I think we should note that Minors 1 -- the conduct  
9       involving Minors 1 through 7 was previously reported to law  
10       enforcement. No charges were filed as a result of those  
11       allegations. Based on my review of reports and just what I  
12       know about these type of investigations, it appeared that  
13       most of the cases were declined for prosecution based on the  
14       ages of the victims, as well as the lack of corroborating  
15       evidence.

16           The offense conduct involving Minors A, E, and YY were  
17       never reported to or known by law enforcement until the  
18       current investigation.

19       **Q.**       Thank you. I would like to just briefly touch on the  
20       specific offense with regards to Minors 3, 4, and 5. Am I  
21       correct that that was a hands-on offense that occurred in  
22       2005?

23       **A.**       Correct.

24       **Q.**       And what was Mr. Roberts's relationship to Minors 3, 4,  
25       and 5?

ANDREA KINZIG - DIRECT

75

1       **A.**     He was their cousin.

2       **Q.**     And what happened, generally speaking?

3                    MR. ANDERSON: Your Honor, I know this is a  
4                    sentencing hearing and the rules of evidence are lax, but I'm  
5                    going to have to object to the characterizations of these as  
6                    being contact offenses. And I'm happy to put that on the  
7                    record now if the Court would like to hear the basis for my  
8                    objection.

9                    THE COURT: Counsel approach.

10                  (Sidebar off the record.)

11                  THE COURT: We're back on the record.

12                  The Court's going to sustain the objection with regard to  
13                  the utilization of the term "offense conduct," and the Court  
14                  will not -- that will not -- that conclusion will not be part  
15                  of the consideration.

16                  The Court also, with regard to necessarily why the  
17                  charges were not -- charges, possible charges were not  
18                  pursued, will not go there.

19                  The agent has every right to testify with regard -- I  
20                  believe, every right with regard -- to testify with regard to  
21                  her investigation surrounding these offenses and other  
22                  activity as permitted in such a hearing.

23                  So counsel, Ms. Rossi, are you clear?

24                  MS. ROSSI: I think so, Your Honor. Thank you very  
25                  much.

ANDREA KINZIG - DIRECT

76

1                   THE COURT: Mr. Anderson, anything further?

2                   MR. ANDERSON: Not at this time. Thank you, Judge.

3                   THE COURT: All right.

4                   MS. ROSSI: Thank you, Judge.

5                   BY MS. ROSSI:

6                   **Q.** Agent Kinzig, did you have reason during your  
7                   investigation to review police reports filed in 2005 that  
8                   concerned Mr. Roberts's minor cousins?

9                   **A.** Yes.

10                  **Q.** Approximately how old were those minor cousins in 2005?

11                  **A.** Based on the report, they were three and five years  
12                  old.

13                  **Q.** Did you review any police reports that reference medical  
14                  examinations that were performed on these minor cousins?

15                  **A.** Yes.

16                  **Q.** Could you please describe for the Court just generally  
17                  and broadly what happened and what you learned based on your  
18                  review of these records?

19                   THE COURT: Hold on just a second.

20                   Do you want a continuing objection, Mr. Anderson, to this  
21                  whole --

22                   MR. ANDERSON: Your Honor, I do. Again, I believe  
23                  that although this is a sentencing hearing and hearsay is  
24                  permissible, now we're about at the fifth level of hearsay.  
25                  She's testifying about her review of a medical report from 20

ANDREA KINZIG - DIRECT

77

1       years ago that did not result in the filing of charges because  
2       of lack of corroborating evidence.

3           At some point, I think the Court can make a decision as  
4       to what is relevant for sentencing in this --

5           THE COURT: I have already ruled with regard to why  
6       charges weren't -- I'm not considering any of that. Counsel's  
7       just asking about her investigation and her interviews, and  
8       I'm overruling that, but I will allow the continuing  
9       objection.

10           MR. ANDERSON: Thank you, Judge.

11           MS. ROSSI: Your Honor, just for the record, may the  
12       government note the response is that it goes to its weight,  
13       not its admissibility?

14           THE COURT: All right.

15           MS. ROSSI: Thank you, Your Honor.

16       BY MS. ROSSI:

17       **Q.** Do you remember the question?

18       **A.** Could you repeat the question, please?

19       **Q.** Absolutely. Just very generally speaking, could you  
20       describe for the Court what you learned about this incident,  
21       and specifically anything medical related?

22       **A.** Yes. The three cousins spent the week with  
23       Mr. Roberts's mother. On one evening the three cousins were  
24       cared for by Mr. Roberts while the mother was away. When  
25       they returned to their mother's residence, one of the minors

ANDREA KINZIG - DIRECT

78

1 reported that Mr. Roberts had put what he referred to as his  
2 ding dong into his and his brother's butt, as well as into  
3 his sisters, what he referred to as "to-to."

4 The children were taken for a medical evaluation. The  
5 one minor also disclosed or reported to a doctor that  
6 Mr. Roberts had put his penis into his mouth.

7 The doctor evaluated the three minors, found that there  
8 were injuries to one of the minor's anus that the doctor  
9 characterized as being Level 3. And the doctor explained  
10 that a Level 3 characterization meant, at least at that  
11 time, that there were injuries that were consistent with --  
12 that were probable of a sexual assault but were not definite  
13 of a sexual assault.

14 **Q.** Thank you. I'd like to move on to Mr. Roberts's conduct  
15 with Minor A.

16 How old was Mr. Roberts's cousin, Minor A, when  
17 Mr. Roberts abused him?

18 **A.** Eleven to 12 years old.

19 **Q.** Did Mr. Roberts ever blackmail Minor A in relation to the  
20 abuse?

21 **A.** Yes. There was an incident that Minor A reported that  
22 when he was spending the night at Roberts's house, Minor A  
23 broke a window with the baseball. And Minor A reported that  
24 Roberts told him that if he would not allow -- he, meaning  
25 Minor A -- would not allow Roberts to take a photograph of

ANDREA KINZIG - DIRECT

79

1       him in the shower, he would tell his -- that Mr. Roberts  
2       would tell Minor A's parents that Minor A had broken the  
3       window.

4       **Q.**      And it's correct that Minor A and Mr. Roberts were  
5       cousins and had an ongoing familial relationship, right?

6       **A.**      Correct.

7       **Q.**      So with regard to minor identified as YY, what happened  
8       there, and what was your investigation into that conduct?

9       **A.**      There were five videos that were recovered from  
10      Mr. Roberts's external hard drive that depicted Minor YY  
11      performing oral sex on Mr. Roberts. Geolocation information  
12      embedded in the excess data for two of the files did, in  
13      fact, identify that those video recordings were produced at  
14      the residence where he was living.

15               Two of the recordings were produced in 2011 when Minor  
16      YY was nine years old, and three of the recordings were  
17      produced on an unknown date, but it would have been sometime  
18      on or before September of 2015, which would have been when  
19      Minor YY was 13 years old or younger.

20       **Q.**      And did you interview this minor after you discovered  
21      these videos?

22       **A.**      Yes.

23       **Q.**      And what did Minor YY tell you about what happened?

24       **A.**      He indicated that he had tried over the years to block  
25      out what had happened, but he did have some recollection of

ANDREA KINZIG - DIRECT

80

1 performing oral sex on Mr. Roberts. He definitively  
2 identified himself in three of the videos. The other two  
3 videos, because he was so young, he didn't provide a  
4 definitive identification but did identify that it did look  
5 at least consistent with him.

6 The video, the still images from those two videos that  
7 Minor YY wasn't definitive of being of him were shown to his  
8 uncle as well as his sister, and they did positively  
9 identify Minor YY as being depicted in those two videos.

10 **Q.** Turning to the -- turning to Mr. Roberts's conduct with  
11 regards to Minor E, is it accurate that Mr. Roberts began  
12 abusing Minor E when Minor E was 13 years old?

13 **A.** That is correct.

14 **Q.** Approximately how long did the abuse continue?

15 **A.** From 13 until he was 18 years old, so into adulthood.

16 **Q.** Was this the only long-term abuse of a minor that  
17 Mr. Roberts engaged in, to your knowledge?

18 **A.** No. There were other minors who Mr. Roberts had long-  
19 term relationships with, ranging from one to three years.

20 **Q.** Based on your training and experience, what is the impact  
21 on victims of a long-term abuse of several years?

22 **A.** Among other impacts, there can be withdrawal from  
23 family members and friends; a drop in academic performance  
24 and other activities like sporting activities; anxiety;  
25 depression; engaging in risky behaviors such as risky sexual

ANDREA KINZIG - DIRECT

81

1 behaviors; substance and alcohol abuse; and other long-term  
2 mental health issues.

3 **Q.** Thank you. Turning now to Slide 5 of Government's  
4 Exhibit 8. Can you tell us about Roberts's "Fake Girl"  
5 scheme?

6 **A.** So one of the schemes that Mr. Roberts used when  
7 communicating with minors was he posed as a minor female in  
8 his communications with a number of the minor males, posed  
9 as somebody having a romantic interest in these minor males.  
10 He used a number of photographs of females, both clothed as  
11 well as nude and sexually explicit images of these females,  
12 that he sent to the minors with the intent of obtaining  
13 similar pictures in return.

14 On his external hard drive, he had a file folder called  
15 "Fake Girl" that he used to store a number of the images  
16 that he sent to the minor males, including the two that are  
17 depicted on the screen, among others that included nude and  
18 sexually explicit images.

19 **Q.** For approximately how many years did Mr. Roberts use the  
20 fake girl ruse to entice minor boys to send him child  
21 pornography?

22 **A.** At least from 2009 through 2020. There could have  
23 continued further, such as, you know, anything that was  
24 possibly done on his iPhone. But the last instance that I  
25 was able to identify of him using that scheme was in 2020

ANDREA KINZIG - DIRECT

82

1       based on the records I have to date.

2       **Q.**     And I'm sorry. Could you repeat for me, when was the  
3            first year that you're aware of?

4       **A.**     2009.

5       **Q.**     2009 to 2019?

6       **A.**     To 2020.

7       **Q.**     2020, thank you. While Mr. Roberts was pretending to be  
8            this teenage girl, did he use any tactics that you would  
9            consider particularly coercive; and if so, could you describe  
10           those?

11      **A.**     Well, like I just mentioned, he sent nude and sexually  
12            explicit images to the minors and then told the minors that,  
13            you know, that he deserved to have similar pictures sent to  
14            him in return.

15           He told the minors that sending nude pictures and/or  
16            videos was normal. He said that talking about sex was  
17            normal. He offered to be a type of mentor to some of these  
18            males, somebody that they could talk to about sex and their  
19            sexuality.

20      **Q.**     Did any of the minors Mr. Roberts communicated with  
21            express discomfort about what Mr. Roberts was saying to them?

22      **A.**     Yes. There were minors who directly told them that  
23            they did not want to send any nude pictures to him. Some of  
24            the minors said, for example, that, you know, because of  
25            their age, because they were minors they didn't want to get

ANDREA KINZIG - DIRECT

83

1       in trouble for sending any pictures. Some just simply said  
2       they didn't want to send them. Some talked about the fact  
3       that they were undeveloped and they were embarrassed by this  
4       and didn't want to send pictures of that type of -- send  
5       pictures of themselves, and he did continue to make the  
6       requests of minors.

7       **Q.**      Based on your training and experience, would you say that  
8       Mr. Roberts's use of this "Fake Girl" scheme was  
9       sophisticated?

10      **A.**     Yes. I mean, it does. You know, for somebody to  
11       pretend to be somebody that they're not, you know, for an  
12       adult male to pretend to be a minor female in communications  
13       with minors over a, you know, what in some cases were one to  
14       three years -- you know, not all of them were that long  
15       periods of time -- but it does involve some planning,  
16       foresight, a lot of effort. It does reflect his ability to  
17       manipulate minors, to be able to give them what they needed  
18       in order to send him nude pictures.

19               Based on the chats, it did appear that some of the  
20       minors thought that they were in love with the female  
21       persona, and there were some of the victims who have been  
22       interviewed, including victims who are now adults as well as  
23       some victims that are still minors, who expressed a  
24       significant amount of discomfort and unease when they were  
25       told that they were not talking to who they thought they

ANDREA KINZIG - DIRECT

84

1       were talking to.

2       **Q.**      Did Mr. Roberts use the specific "Fake Girl" scheme on  
3       any of the victims that he actually had contact with?

4       **A.**      You mean contact with online or contact with in person?

5       **Q.**      Thank you for that clarified question. Contact in  
6       person.

7       **A.**      Yes, with Minor A. In August of 2009, Mr. Roberts  
8       communicated with Minor A via email using the "Fake Girl"  
9       persona. And he was able to obtain at least sexually  
10      explicit image of Minor A while using this persona.

11      **Q.**      And so Mr. Roberts did this to Minor A years after he  
12      physically abused Minor A and produced the Polaroid  
13      photographs of Minor A; is that correct?

14      **A.**      Yes, so it would have been about one to two years  
15      later.

16      **Q.**      Is Minor A aware of this?

17      **A.**      Generally. I didn't want to upset him too much because  
18      he was already dealing with a lot, but he's somewhat aware  
19      of what happened.

20      **Q.**      What was his reaction when he found out that this teenage  
21      girl was not, in fact, a teenage girl?

22      **A.**      Obviously, not happy.

23      **Q.**      Did Mr. Roberts reach out to any of Minor A's friends and  
24      attempt the same scheme with them?

25      **A.**      Yes. There were at least three other minor males who

ANDREA KINZIG - DIRECT

85

1       were friends or schoolmates of Minor A that Mr. Roberts used  
2       this persona with to obtain nude and sexually explicit  
3       images of.

4       **Q.**      What was Minor A's reaction to learning that his friends  
5       were also victims of Mr. Roberts?

6       **A.**      That made him feel additional shame and embarrassment  
7       about what happened.

8       **Q.**      I'm now showing you Slide 6 of Government's Exhibit 8.  
9       In addition to the "Fake Girl" scheme, Agent Kinzig, did  
10      Mr. Roberts use any other methods in order to obtain child  
11      pornography from minors?

12      **A.**      Yes. He offered to pay other minors in either currency  
13      or gift -- typically in gift cards for them to engage in  
14      sexually explicit conduct. This was often used during the  
15      live video chats that he recorded. He offered minors gift  
16      cards to gaming systems such as Nintendo, X-Box, Fortnite,  
17      and other similar gaming applications.

18               And during the execution of the search warrant at  
19      Mr. Roberts's residence in February 2023, there were  
20      approximately 23 of these gift cards that were consistent  
21      with the ones that were displayed during the live video  
22      chats and/or were described by the victims that were  
23      recovered on a -- on or near a desk in his computer room.

24      **Q.**      Just a quick clarifying question. I believe you said  
25      that they were recovered, these gift cards, in February 2023.

ANDREA KINZIG - DIRECT

86

1       Did you mean February 2022?

2       **A.**     I'm sorry. Yes. Thank you.

3       **Q.**     Thank you. Turning now to Slide 7 of Government's

4       Exhibit 8, Agent Kinzig, how would you characterize

5       Mr. Roberts's behavior whenever in the past he's been

6       confronted with allegations that related to him committing

7       offenses against children, specifically sexual offenses

8       against children?

9       **A.**     He's always either denied the allegations or refused to

10      provide any statements.

11      **Q.**     Was there an incident that occurred in 2017 in which

12      Mr. Roberts provided false information to law enforcement?

13      **A.**     Yes. He was actually interviewed, I believe, in

14      January of 2018 regarding a cyber tip line report that had

15      been submitted by Snap Inc regarding a Snapchat account that

16      was believed to be utilized by Roberts to obtain trade or

17      otherwise acquire one or more child pornography files. He

18      was interviewed by a detective of the Huber Heights Police

19      Department, and he claimed that somebody else must have used

20      his IP address and denied that he had ever sent any explicit

21      pictures or videos to anybody.

22      **Q.**     Did you interview an individual who is an uncle of victim

23      YY?

24      **A.**     Yes.

25      **Q.**     How -- what was Mr. Roberts's relationship to the adult

ANDREA KINZIG - DIRECT

87

1 individual who's the uncle of victim YY?

2 **A.** They were roommates, previously roommates.

3 **Q.** And for many years?

4 **A.** Yes. It was a number of years. I can't recall exactly  
5 how many, but it was multiple years.

6 **Q.** Did the uncle tell you -- or did you ask the uncle  
7 anything about his knowledge of any sexual offenses against  
8 children that Mr. Roberts might have told him about?

9 **A.** He did refer to one of the incidents, or I should say  
10 Mr. Roberts did tell the roommate about one of the incidents  
11 that occurred at the store that he was working at involving  
12 one of the minor males, and Mr. Roberts's response to that  
13 was that some dumb Mexican lady had accused him of doing  
14 something to her son.

15 **Q.** And specifically that she had reported him for touching  
16 her son's butt; is that correct?

17 **A.** Correct, yes.

18 **Q.** Can you please tell the Court about Mr. Roberts's  
19 behavior after you served the search warrant on his residence  
20 in February of 2022?

21 **A.** Yes. He did continue communicating with Minors A, E,  
22 and F after the execution of the search warrant in February  
23 2022. He told those minors -- well, and actually two of  
24 them were -- Minor A was an adult now and Minor E eventually  
25 became an adult. But he told Minors A, E, and F about the

ANDREA KINZIG - DIRECT

88

1 search warrant that was executed at his residence, about law  
2 enforcement's investigation. He told them about his plans  
3 to kill himself before he was arrested. I know that caused  
4 some anxiety to all three of those minors and could have  
5 impacted their involvement in the investigation.

6 He did continue communicating with at least Minors E  
7 and F up to the day that he was arrested in June 2022.  
8 Also, after he was -- after the search warrant was executed,  
9 he at some point began hiding in his mother's retirement  
10 community, hiding from law enforcement, which was a  
11 residence where he was not supposed to be living at.

12 He had a friend or acquaintance regularly check docket  
13 systems for any warrants that may have been issued for him  
14 that appeared to be in an effort to potentially commit  
15 suicide before he was arrested.

16 When he was -- on the day that he was arrested in June  
17 of 2022, when law enforcement officers were approaching the  
18 mother's retirement community, he did see a marked unit  
19 approach the unit. He fled from his mother's unit, hid  
20 under a stairwell. Officers, after searching -- or checking  
21 his mother's residence, had to search the complex and found  
22 Mr. Roberts hiding under a stairwell.

23 **Q.** And it's at that time, I believe you previously  
24 testified, that he had a phone that he then powered off?

25 **A.** No. The iPhone that he powered off, that was from the

ANDREA KINZIG - DIRECT

89

1       February 2022 search warrant. There was another search  
2       warrant that was recovered at that time.

3       **Q.**      Thank you for that clarification. There was a phone  
4       related to Mr. Roberts's presence in the stairwell; is that  
5       correct?

6       **A.**      There was, yes.

7       **Q.**      Okay.

8       **A.**      That one has been examined.

9       **Q.**      And has child pornography files on it?

10      **A.**      It does not. It does have communications with Minors E  
11      and F, but it did not have any child pornography files.

12      **Q.**      Thank you for that clarification. Minor E, specifically  
13      you've testified, he continued talking to after agents  
14      executed a search warrant at his residence in February 2022.  
15      Just for clarification, Minor E is the 13- to 18-year-old  
16      victim that Mr. Roberts had an ongoing relationship with?

17      **A.**      Yes.

18      **Q.**      Do you believe that that relationship involved sexual  
19      offenses against Minor E?

20      **A.**      I do. When Minor E was interviewed, he basically said  
21      that Mr. Roberts did have some sort of sexual contact with  
22      him but he didn't want to talk about it, that it was too  
23      much for him to talk about at that time. Minor A, when he  
24      was interviewed, he did say that Roberts had disclosed to  
25      him, Minor A, that Roberts had, in fact, had sex with Minor

ANDREA KINZIG - DIRECT

90

1       E.

2       **Q.**     And had had sex with Minor E when Minor E was a minor?

3       **A.**     He did not specify the age, but I know at least at one  
4       point it was at least reflective of when he was 17, but he  
5       did not specify at what age Mr. Roberts began having sex  
6       with Minor E.

7       **Q.**     Based on your training and experience, what might be the  
8       long-term impacts on Minor E, based on this five-year  
9       relationship with Mr. Roberts?

10      **A.**     Sure. Similar to what I previously stated about long-  
11       term impact -- or impacts of long-term relationships, again,  
12       it can be withdrawal from family members and friends; drops  
13       in grades or academic performance; anxiety; depression;  
14       long-term mental health issues; substance abuse.

15      **Q.**     I'd like you to turn to the exhibit binder that's in  
16       front of you. Could you please briefly look through the eight  
17       exhibits that are in there and confirm that you are familiar  
18       with these exhibits?

19      **A.**     Yes.

20      **Q.**     To the best of your knowledge, is all the information  
21       contained in each exhibit accurate?

22      **A.**     To the best of my knowledge, yes.

23      **Q.**     I'd like you to turn to Government's Exhibit 5, which I  
24       am not going to display on the screen due to the nature of the  
25       exhibit. Can you please tell the Court what Exhibit 5 is?

ANDREA KINZIG - DIRECT

91

1       A.     These are sanitized or otherwise appropriate images of  
2     the victims of Mr. Roberts's child pornography offenses.  
3     The first three pages of actual photographs that are  
4     contained on the exhibit contain pictures -- sanitized  
5     pictures of the victims to have been fully identified to  
6     date.   Essentially, all or nearly all of these pictures were  
7     either one of the appropriate pictures or non-child  
8     pornography pictures that the minors had sent to Mr. Roberts  
9     or were ones that I cropped to only reflect their faces and  
10    not any of the inappropriate nudity.

11           The next four -- yes, four pages of pictures, the ones  
12    starting saying "Email User 2," et cetera, those are the  
13    unidentified victims to date.   And again, using sanitized  
14    pictures, otherwise appropriate pictures.   I believe in one  
15    case -- or, I'm sorry -- in two cases I ended up using a  
16    Facebook photograph and a driver's license photograph.   But  
17    there are a couple or even more than a couple of the minors  
18    who I was not able to obtain any sort of appropriate  
19    pictures for.   So they just had a placeholder that said  
20    something to the effect of Skype User 3 or Twitter User 10.

21           MS. ROSSI:   Your Honor, I have no further questions  
22    for Agent Kinzig, apart from moving Government's Exhibits 1  
23    through 8 into evidence, and specifically with Exhibit 5,  
24    moving that into evidence under seal.

25           THE COURT:   Well, I'll reserve my ruling.

ANDREA KINZIG - CROSS

92

1                   Do you have anything?

2                   MR. ANDERSON: On cross-examination?

3                   THE COURT: Yes.

4                   MR. ANDERSON: Yes, I do. Judge, are we a hard stop  
5                   at noon?

6                   THE COURT: We are a hard stop at noon. But don't  
7                   worry, if you are not done, we will start again some other  
8                   time.

9                   MR. ANDERSON: I appreciate it, Judge. Thank you.

10                  I think I should be able to finish by then, Judge.

11                  THE COURT: That's totally up to you, Mr. Anderson.

12                   **CROSS-EXAMINATION**

13                  BY MR. ANDERSON:

14                  **Q.** Agent Kinzig, you've obviously reviewed the presentence  
15                  report in this case?

16                  **A.** No.

17                  **Q.** You have not read it, okay.

18                  **A.** I don't think I'm allowed to.

19                  **Q.** Forgive me. I misspoke. You have seen the indictment in  
20                  this case, and you are familiar with the plea agreement in  
21                  this case; is that correct?

22                  **A.** I am, yes.

23                  **Q.** And specifically, Mr. Roberts has pled guilty to  
24                  production of child pornography -- I believe that was Count 1  
25                  of the indictment -- is that correct?

ANDREA KINZIG - CROSS

93

1       **A.**     Correct.

2       **Q.**     And there is one victim in Count 1; is that correct?

3       **A.**     Yes.

4       **Q.**     And which minor is that again?

5       **A.**     Minor A.

6       **Q.**     That's Minor A, okay. And specifically, the images that  
7        were produced here were produced, we believe, around 2007,  
8        right?

9       **A.**     2007 or early 2008.

10      **Q.**     Somewhere in that ballpark?

11      **A.**     Um-hmm, yes.

12      **Q.**     All right. So we're talking about images that were  
13     produced, is that 16 years ago?

14      **A.**     That sounds -- 15 to 16 years ago.

15      **Q.**     15 to 16 years ago. And these were Polaroid images; is  
16     that right?

17      **A.**     Correct.

18      **Q.**     And at the time, that would have made Mr. Roberts -- 15  
19     or 16 years, he's 38. So he would have been maybe 21 or 22.  
20     Does my math hold up?

21      **A.**     I believe he was born in '85. So he would be roughly  
22     around 22 years old, yes.

23      **Q.**     22, and the victim was 11 or 12. I think the PSI gave  
24     the benefit of the doubt and said he was 12. So roughly a  
25     ten-year age difference between Mr. Roberts and the victim in

ANDREA KINZIG - CROSS

94

1 Count 1; is that fair?

2 **A.** Yes.

3 **Q.** Now, Mr. Roberts was never charged with any criminal  
4 offense for any contact with Minor A; is that correct?

5 **A.** No, that was never reported to law enforcement, and the  
6 Polaroid photos were never known until the current  
7 investigation.

8 **Q.** And so Minor A did not report anything to law  
9 enforcement, to your knowledge?

10 **A.** Not back then. He did in 2022.

11 **Q.** So that was some 16 years later?

12 **A.** Yes. If the math is correct, yes.

13 **Q.** Okay. Count 2 of -- excuse me. Count 15 is the second  
14 count of conviction. That's coercion and enticement; is that  
15 correct?

16 **A.** Yes.

17 **Q.** And there was a specific minor that was identified in  
18 that count, right?

19 **A.** Yes.

20 **Q.** And how old was that minor?

21 **A.** If you give me a moment to look at the chart.  
22 Was he Minor C?

23 **Q.** I believe that's correct. I believe he might have been  
24 12 years of age.

25 **A.** Yes. I'm sorry. I'm looking at the wrong line. Yes,

ANDREA KINZIG - CROSS

95

1       Counts 15 to 17 in the indictment relate to Minor C, who was  
2       12 years old at the time of the production of the child  
3       pornography files. I'm sorry about that.

4       **Q.**      Right. And this child pornography were images of Minor  
5       C, correct?

6       **A.**      Correct.

7       **Q.**      Mr. Roberts is not accused or alleged to have had any  
8       contact with Minor C; is that right?

9       **A.**      That is correct.

10      **Q.**      And, in fact, Mr. Roberts has never been charged with any  
11       sexual contact offense with a minor; is that correct?

12      **A.**      Up until now, yes.

13      **Q.**      Well, specifically in this indictment, was he charged  
14       with an actual contact offense of a minor?

15      **A.**      The production of child pornography, which involved  
16       contact offenses, yes.

17      **Q.**      Okay. Well, let's talk about that. Because Count 1, the  
18       Production of Child Pornography, that he pled guilty to, that  
19       was the eight Polaroids, right?

20      **A.**      It was one of the Polaroid photos, yes.

21      **Q.**      And what did that one Polaroid depict, that you would  
22       consider to be sexual contact?

23      **A.**      I would have to go back and look at which specific  
24       Polaroid photo there was, but there were two Polaroid  
25       photographs were which acknowledged in the statement of

ANDREA KINZIG - CROSS

96

1       facts as being ones that he produced that involved -- one  
2       involving Mr. Roberts performing fellatio on Minor A and one  
3       involving Minor A performing fellatio on -- I don't know  
4       which way I said. One both ways for fellatio; one of  
5       Roberts performing on Minor A and one of Minor A performing  
6       on Roberts.

7       **Q.**      Again, Minor A was 12 years of age, approximately?

8       **A.**      Yes.

9       **Q.**      And Mr. Roberts was 21 or 22 years of age?

10      **A.**      Yes. I think probably 22, but roughly around that age,  
11      yes.

12      **Q.**      And that's depicted in two of the Polaroids?

13      **A.**      Correct.

14      **Q.**      The other Polaroids were just child pornography in the  
15      sense that they were lewd and lascivious exhibitions of the  
16      12-year-old, right?

17      **A.**      Correct, correct.

18      **Q.**      And, of course, production of child pornography in and of  
19      itself is not a contact offense, correct?

20      **A.**      It can involve a contact offense.

21      **Q.**      But in and of itself, that's not an element that has to  
22      be proved. You can produce child pornography without any  
23      contact; is that correct?

24                    **MS. ROSSI:** Your Honor, I have to object just  
25                    because it calls for a legal conclusion.

ANDREA KINZIG - CROSS

97

1                   THE COURT: Well, I understand your point,

2                   Mr. Anderson. There's no reason for the agent to --

3                   MR. ANDERSON: That's fine. I'll withdraw the

4                   question, Judge.

5                   BY MR. ANDERSON:

6                   **Q.** So, Agent Kinzig, except for the conduct described in  
7                   Count 1 that we just talked about with Minor A, Mr. Roberts  
8                   has never been charged with a contact offense against a minor;  
9                   is that correct?

10                  **A.** Correct.

11                  **Q.** Okay. Now, one of the exhibits -- and part of your  
12                  testimony did talk about actual contact offenses that you  
13                  believe Mr. Roberts has committed; is that fair?

14                  **A.** Which -- where are you referring to? Are you referring  
15                  to a particular exhibit?

16                  **Q.** Yes. If you take a look at Government Exhibit 1.

17                  **A.** Yes.

18                  **Q.** Okay. Do you have Government Exhibit 1?

19                  **A.** Yes.

20                  **Q.** I believe that consists of two pages?

21                  **A.** Yes.

22                  **Q.** Is that right? And in the notes, it says that "Yellow  
23                  shaded rows represent Roberts's actual and attempted contact  
24                  offenses with minors." Is that right?

25                  **A.** Yes.

ANDREA KINZIG - CROSS

98

1       **Q.**     So the ones that are shaded in yellow are allegations  
2                 that Mr. Roberts actually committed a contact offense with a  
3                 minor?

4       **A.**     Yes.

5       **Q.**     Okay. Now, I understand that he was charged with  
6                 production of child pornography as it relates to Minor A and  
7                 that there were two Polaroids that depicted sexual contact.  
8                 But with respect to these other shaded yellow instances, there  
9                 has never been any criminal charges filed against Mr. Roberts;  
10                is that right?

11      **A.**     That is correct.

12      **Q.**     Okay. So he's never received an indictment. He's never  
13                been brought before a fact-finder and had those facts  
14                determined in a court of law; is that correct?

15      **A.**     Correct.

16      **Q.**     And I believe you indicated that with respect to at least  
17                some of these shaded yellow -- some of this shaded yellow  
18                conduct, there was a decision not to charge Mr. Roberts  
19                because of insufficient corroborating evidence; is that right?

20      **A.**     I don't know if that's the exact reason. I just said  
21                that based on the review of the report and what I know about  
22                these cases, that that appeared -- could be a possible  
23                reason for why at least some of them were declined was the  
24                lack of enough supporting evidence for prosecution in a  
25                court of law. But I never talked to the prosecutor to say

ANDREA KINZIG - CROSS

99

1       was that your reason for declining the case.

2       **Q.**     Okay. So it would be absolute speculation on your part  
3            to testify as to why charges of contact offenses were never  
4            brought against Mr. Roberts. You'd be completely speculating?

5       **A.**     Speculating with some experience in these type of  
6            cases, but I -- but you are correct, I did not talk to the  
7            prosecutor to find out specifically why they declined  
8            prosecution.

9       **Q.**     And as we sit here today, charges have not been brought,  
10           to your knowledge, against Mr. Roberts about these instances  
11           of alleged contact with minors; is that correct?

12      **A.**     That is correct.

13      **Q.**     Okay. Agent Kinzig, you are familiar with the plea  
14           agreement in this case; is that correct?

15      **A.**     I am.

16      **Q.**     I don't know if you have a copy of it in front of you.

17      **A.**     I think I have one, but I don't -- I have the statement  
18           of facts but not the entire plea agreement.

19      **Q.**     That's what I wanted to focus on.

20      **A.**     Sure.

21      **Q.**     You --

22      **A.**     I have it in front of me.

23      **Q.**     Okay. You gave some testimony about a victim, Minor YY.  
24           Do you recall that?

25      **A.**     I do.

ANDREA KINZIG - CROSS

100

1       **Q.**     And this is -- and I believe you testified that allegedly  
2                   Mr. Roberts sexually abused Minor YY back in February of 2011?

3       **A.**     Yes.

4       **Q.**     Okay. Now, obviously, Mr. Roberts was not charged in  
5                   this federal indictment with that conduct, correct?

6       **A.**     No. The identification of that victim happened only  
7                   within early 2023.

8       **Q.**     But he has not been charged with that offense?

9       **A.**     Not at this time.

10      **Q.**     And he's not been charged by the state for that offense?

11      **A.**     Not at this time.

12      **Q.**     And he did not admit to that conduct in the statement of  
13                   facts; is that correct?

14      **A.**     It was not known at the time of the plea agreement.

15      **Q.**     My question was has he admitted to that conduct as he  
16                   sits here today?

17      **A.**     No.

18      **Q.**     So he has not been charged with it, correct?

19      **A.**     Not at this time.

20      **Q.**     And he has not admitted it?

21      **A.**     No.

22      **Q.**     And you do not know whether or not charges will be filed  
23                   for that conduct that allegedly occurred in 2011; is that  
24                   correct?

25      **A.**     At this time, I don't know.

ANDREA KINZIG - CROSS

101

1       **Q.**     In fact, in the statement of facts attached to the plea  
2     agreement, he did acknowledge a significant number of minors  
3     that he communicated with via the Internet; is that correct?

4       **A.**     Yes. Those were ones that we had been, based on the  
5     investigation, been able to identify at that time. But our  
6     investigation did continue.

7       **Q.**     Okay. And again, none of those minors that are  
8     referenced in the statement of facts, none of that involves  
9     contact on the part of Mr. Roberts with those minors; is that  
10    correct?

11      **A.**     Except for Minor A.

12      **Q.**     Minor A is the individual who was 12 years old back in  
13    2007; is that right?

14      **A.**     Correct.

15      **Q.**     Okay. None of the other minors, though, involve any  
16    contact, physical contact between Mr. Roberts and them; is  
17    that correct?

18      **A.**     Well, there are -- Minor E, as we previously discussed,  
19    did disclose some sort of sexual contact that he didn't want  
20    to disclose at the time.

21      **Q.**     We don't know what that was?

22      **A.**     We don't, no.

23      **Q.**     Okay.

24      **A.**     Other than the fact that Minor A said that it was  
25    sexual intercourse.

ANDREA KINZIG - CROSS

102

1       **Q.**     If I could turn your attention to Government's Exhibit --  
2                 one second. I believe it's Government Exhibit 2. It's a  
3                 summary of all communications with minors.

4       **A.**     Yes.

5       **Q.**     Do you see what I'm referring to? This is a chart that  
6                 you prepared in anticipation of your testimony, right?

7       **A.**     Yes.

8       **Q.**     And it's self explanatory. It breaks down the total  
9                 number of minors in the first column, and then the age range  
10                 of known minors in years. Do you see that?

11      **A.**     I do.

12      **Q.**     Okay. Now, if we go down to the column referring to  
13                 "Skype files produced by Roberts via screen recordings and  
14                 screenshots."

15      **A.**     I see that line.

16      **Q.**     There's a total of 12 minors that you have identified.

17      **A.**     12 total that he communicated with.

18      **Q.**     Okay.

19      **A.**     That does not necessarily mean that there were 12 that  
20                 produced child pornography -- well, if you look at the  
21                 couple lines over?

22      **Q.**     Um-hmm.

23      **A.**     That also reflects the number of minors that child  
24                 pornography files were acquired from. So both 12 that he  
25                 communicated with and 12 that child pornography files were

ANDREA KINZIG - CROSS

103

1       acquired from.

2       **Q.**     Understood. And again, these are child pornography that  
3       depicts the minors themselves either exposing themselves when  
4       Mr. Roberts's on the other end but not Mr. Roberts anywhere  
5       near the minors; is that correct?

6       **A.**     No. Exposing themselves or masturbating or engaging in  
7       other sexually explicit conduct.

8       **Q.**     The vast majority of his interactions with these minor  
9       boys, they involved similar conduct: masturbation or nudity  
10       in general?

11       **A.**     Yes. For his online communications, yes.

12       **Q.**     If we could go back, Agent Kinzig. Again, you testified  
13       pretty extensively. If we could go back to Government's  
14       Exhibit 1.

15       **A.**     I'm there.

16       **Q.**     And if we go back to 1999 to 2000, you testified about  
17       allegations that Mr. Roberts engaged in sexually explicit  
18       conduct with a two-year-old relative, Minor 1; is that  
19       correct?

20       **A.**     Yes. I documented the allegations that were made by  
21       that relative.

22       **Q.**     Okay. You have not interviewed that individual, right?

23       **A.**     No.

24       **Q.**     Okay. Likewise, with Roberts's six- to seven-year-old  
25       female relative, Minor 2, you have not interviewed that

ANDREA KINZIG - CROSS

104

1 individual?

2 **A.** No. And if I may make one slight correction. I  
3 briefly made contact with Minor 1, and basically he said  
4 that he doesn't remember what happens to him when he was two  
5 years old but his parent might remember.

6 **Q.** Okay. But you haven't interviewed him specifically about  
7 the allegations?

8 **A.** Correct. Other than I asked if he remembered anything  
9 about what happened, and he basically said he doesn't  
10 remember anything from that age range.

11 **Q.** I understood. Still on Government Exhibit 1, and I think  
12 we touched on this --

13 **A.** And I'm so sorry to interrupt you.

14 **Q.** Go ahead.

15 **A.** But I don't want to be inaccurate. The -- did you  
16 ask -- the question regarding Minor 2, did you ask me if I  
17 interviewed her?

18 **Q.** Yes.

19 **A.** I did speak to her, yes.

20 **Q.** Okay.

21 **A.** She says that she basically has dreams about what  
22 happened, but that is all -- that she has had dreams about  
23 being at Mr. Roberts's house and doing -- him doing things  
24 like putting beanie bags under her underwear but doesn't  
25 have specific memory of him pulling her underwear aside but

ANDREA KINZIG - REDIRECT

105

1       does have -- at least has had dreams about inappropriate  
2       contact by Mr. Roberts.

3       **Q.**     Okay. And again, with respect to Minor 1 and Minor 2,  
4       you testified about reviewing some medical reports as part of  
5       your investigation. Did that relate to Minor 1 and Minor 2?

6       **A.**     No, that was Minor 3, 4, and 5.

7       **Q.**     And again, you're not a doctor?

8       **A.**     No.

9       **Q.**     And charges have never been filed?

10      **A.**     No.

11      **Q.**     Against Mr. Roberts?

12           I believe you testified that part of that may have been  
13       because there was no other corroborating evidence, or were you  
14       speculating on that as well?

15      **A.**     No. Like you said, I did not talk to the prosecutor.

16           MR. ANDERSON: Judge, I have nothing further.

17           THE COURT: All right.

18           MS. ROSSI: Your Honor, I just have two questions on  
19       redirect, if I may.

20           THE COURT: Okay.

21                            REDIRECT EXAMINATION

22       BY MS. ROSSI:

23       **Q.**     Agent Kinzig, Mr. Anderson asked you about the fact that  
24       Mr. Roberts produced the nine Polaroid photographs in 2007 or  
25       2008 when Mr. Roberts was approximately 21 or 22 years old; is

ANDREA KINZIG - REDIRECT

106

1 that right?

2 **A.** That is right, yes.

3 **Q.** Did Mr. Roberts ever reproduce those Polaroid  
4 photographs?

5 **A.** He did.

6 **Q.** Was that in 2018?

7 **A.** I'm sorry. I just want to -- yes, August of 2018.

8 **Q.** So when he reproduced those, he was 33 years old,  
9 correct?

10 **A.** Approximately.

11 MS. ROSSI: Thank you. Nothing further.

12 THE COURT: Anything?

13 MR. ANDERSON: Nothing based on that. Thank you.

14 THE COURT: Any reason this witness cannot step  
15 down?

16 Thank you, Agent.

17 Now, first, is there any other witnesses?

18 MS. ROSSI: No, Your Honor. But I just realized the  
19 Court has reserved ruling on the admissibility of the  
20 government's exhibits. Does the Court need me to lay a  
21 foundation for any of those exhibits?

22 THE COURT: No, I just need you -- my understanding,  
23 there was no objection.

24 MR. ANDERSON: Not to their being admitted, no, Your  
25 Honor.

1                   THE COURT: But I need to make -- we need to be  
2 clear, the exhibits that you are moving for admission is all  
3 of the tabs?

4                   MS. ROSSI: Yes. Exhibits 1 through 8, Your Honor.  
5 I didn't want to take the Court's time and go over all of them  
6 extensively, but I am happy to.

7                   THE COURT: They will be admitted without objection  
8 then.

9                   MS. ROSSI: Thank you.

10                  THE COURT: And you wanted to admit 5 under seal?

11                  MS. ROSSI: That's correct, Your Honor. And, in  
12 fact, actually, I'd like to admit Exhibit 8 with one redaction  
13 to one of the slides; the slide showing the two minor girls  
14 under the "Fake Girl" slide, I would like to redact their  
15 faces for the public exhibit, so the full exhibit.

16                  THE COURT: Any objection to that, Mr. Anderson?

17                  MR. ANDERSON: No objection.

18                  MS. ROSSI: Thank you.

19                  THE COURT: So 5 will be admitted but sealed and 8,  
20 is that what you said?

21                  MS. ROSSI: Yes, Your Honor, a redacted version.

22                  THE COURT: Redacted version.

23                  (Government Exhibit 1 through 8, inclusive, were received  
24 in evidence.)

25                  THE COURT: Anything else, Mr. Anderson, at this

1 point in time?

2 MR. ANDERSON: I have no additional witnesses, Your  
3 Honor.

4 MS. ROSSI: Nothing at this time.

5 THE COURT: Here's what we'll do counsel, then:

6 We're going to recess the hearing at this time. We will  
7 reconvene. By that time I will have an opportunity to delve a  
8 lot more into your exhibits that have just now been -- your  
9 exhibits that have been admitted or the exhibit that will be  
10 provided as part of a memorandum, that being the report.

11 I will also be able to review your memoranda prior to  
12 continuing the hearing. And, of course, at that point in time  
13 you will be given an opportunity in addition to make further  
14 argument with regard to the case, disposition, mitigation of  
15 disposition, the factors of sentencing. Mr. Roberts will be  
16 given an opportunity at that time. And then, counsel, if you  
17 need to have any other individuals, any other victims prepared  
18 to be part of your presentation. All right?

19 MS. ROSSI: Yes, Your Honor. Thank you.

20 THE COURT: Anything further?

21 MR. ANDERSON: Judge, I would like a transcript of  
22 the hearing before I prepare my memorandum. So I'm not sure  
23 the turnaround on a transcript, but if I could maybe have 21  
24 days after receipt of the transcript I could have my  
25 memorandum filed, that should be plenty of time for me. I

1       don't know if the government would oppose that. And I would  
2       assume me might be talking about maybe contemporaneous briefs  
3       with the option maybe to reply?

4                   THE COURT: Let's do this: Transcript will be  
5       prepared in three weeks, then 21 days for simultaneous  
6       memoranda, and then ten days for any reply that you might want  
7       to make.

8                   MR. ANDERSON: Thank you, Judge.

9                   MS. ROSSI: Thank you very much, Your Honor.

10                  THE COURT: Anything further?

11                  MS. ROSSI: Nothing. Thank you.

12                  MR. ANDERSON: Nothing. Thank you.

13                  THE COURT: Thank you very much.

14                  THE COURTROOM DEPUTY: All rise. This court stands  
15       in recess.

16                  (Proceedings concluded at 12:02 p.m.)

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CERTIFICATE OF REPORTER

2

3                   I, Mary A. Schweinhagen, Federal Official Realtime  
4                   Court Reporter, in and for the United States District Court  
5                   for the Southern District of Ohio, do hereby certify that  
6                   pursuant to Section 753, Title 28, United States Code that the  
7                   foregoing is a true and correct transcript of the  
8                   stenographically reported proceedings held in the  
9                   above-entitled matter and that the transcript page format is  
10                  in conformance with the regulations of the Judicial Conference  
11                  of the United States.

12

13                  s/Mary A. Schweinhagen

14

\_\_\_\_\_ 20th of September, 2023

15

MARY A. SCHWEINHAGEN, RDR, CRR  
FEDERAL OFFICIAL COURT REPORTER

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